

Standing Committee on Copyright and Related Rights

Thirty-third Session
Geneva, November 14 to 18, 2016

DRAFT REPORT

Prepared by the Secretariat

1. The Standing Committee on Copyright and Related Rights (hereinafter referred to as the “Committee”, or the “SCCR”) held its Thirty-Third Session in Geneva, from November 14 to 18, 2016.
2. The following Member States of the World Intellectual Property Organization (WIPO) and/or members of the Bern Union for the Protection of Literary and Artistic Works were represented in the meeting: Algeria, Argentina, Armenia, Australia, Bahamas, Belarus, Belgium, Bhutan, Brazil, Bulgaria, Cameroon, Canada, Chile, China, Colombia, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czech Republic, Democratic People's Republic of Korea, Denmark, Djibouti, Dominican Republic, Ecuador, El Salvador, Estonia, Finland, France, Gabon, Germany, Greece, Guatemala, Haiti, Holy See, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Israel, Italy, Japan, Kazakhstan, Kenya, Lebanon, Malawi, Malta, Mexico, Morocco, Mozambique, Nepal, New Zealand, Nigeria, Oman, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Senegal, Slovakia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Thailand, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States of America, Uruguay, Viet Nam and Yemen (81).
3. The European Union (EU) participated in the meeting in a member capacity.
4. The following Intergovernmental Organizations (IGOs) took part in the meeting in an observer capacity: African Union (AU), *Organization Internationale de la Francophonie* (OIF), Organization of Islamic Cooperation (OIC), South Centre (SC) and the World Trade Organization (WTO) (5).
5. The following non-governmental organizations (NGOs) took part in the meeting in an observer capacity: Actors, Interpreting Artists Committee (CSAI), African Library and Information Associations and Institutions (AfLIA), *Agence pour la Protection des Programmes* (APP), *Alianza de Radiodifusores Iberoamericanos para la Propiedad Intelectual* (ARIPPI), Archives et Records Association (ARA)/Archives and Records Association (ARA), Asia-Pacific Broadcasting Union (ABU), *Asociación Argentina de Intérpretes* (AADI) Association for the International Collective Management of Audiovisual Works (AGICOA), Association of Commercial Television in Europe (ACT), Association of European Performers' Organizations (AEPO-ARTIS), British Copyright Council (BCC), Canadian Copyright Institute (CCI), Central and Eastern European Copyright Alliance (CEECA), Centre for International Intellectual Property Studies (CEIPI), Centre for Internet and Society (CIS), Chamber of Commerce and Industry of the Russian Federation (CCIRF), Civil Society Coalition (CSC), Communia, Copyright Research and Information Center (CRIC), Creative Commons Corporation, Daisy Consortium (DAISY), Digital Video Broadcasting (DVB), Electronic Information for Libraries (eIFL.net), European Broadcasting Union (EBU), European Bureau of Library, Information and Documentation Associations (EBLIDA), European Law Students' Association (ELSA International), European Publishers Council (EPC), European Visual Artists (EVA), Fédération européenne des sociétés de gestion collective de producteurs pour la copie privée audiovisuelle (EUROCOPYA), German Library Association, Ibero-Latin-American Federation of Performers (FILAIE), Instituto Autor, International Association of Broadcasting (IAB), International Association for the Protection of Intellectual Property (AIPPI), International Association of Scientific Technical and Medical Publishers (STM), International Authors Forum (IAF), International Center for Trade and Sustainable Development (ICTSD), International Confederation of Music Publishers (ICMP), International Confederation of Societies of Authors and Composers (CISAC), International Council of Museums (ICOM), International Council on Archives (ICA), International Federation of Actors (FIA), International Federation of Journalists (IFJ), International Federation of Library Associations and Institutions (IFLA), International Federation of Musicians (FIM), International Federation of Reproduction Rights Organizations (IFRRO), International Federation of the Phonographic Industry (IFPI), International Literary and Artistic Association (ALAI), International Publishers Association (IPA), International Society for

the Development of Intellectual Property (ADALPI), International Video Federation (IVF), Karisma Foundation, Knowledge Ecology International, Inc. (KEI), Latin Artis, Library Copyright Alliance (LCA), Max-Planck Institute for Intellectual Property and Competition Law (MPI), Motion Picture Association (MPA), North American Broadcasters Association (NABA), Scottish Council on Archives (SCA), Society of American Archivists (SAA), The Japan Commercial Broadcasters Association (JBA), Third World Network Berhad (TWN), World Association of Newspapers (WAN) and World Blind Union (WBU) (65).

AGENDA ITEM 1: OPENING OF THE SESSION

6. The Chair welcomed the delegates to the Thirty-Third Session of the SCCR and invited the Deputy Director General of Copyright and Creative Industries Sector to provide her opening address.

7. The Deputy Director General joined the Chair in welcoming the delegates to the Thirty-Third Session of the SCCR and assured the Standing Committee that it had the full support of the Secretariat. The Deputy Director General observed that the Committee had two main items on its Agenda, namely, broadcasting and exceptions and limitations. On the first item, the broadcasting treaty, the Deputy Director General stated that as the technical studies were ripe, she had noticed a desire to complete the work of the Treaty very soon. She indicated that some members had encouraged the SCCR to make increased efforts to convene a diplomatic conference by the following assemblies and rapidly achieve the long-awaited international treaty. To meet that objective, the Deputy Director General stated that the Secretariat was prepared to make available all its resources. On the second major item before the SCCR, exceptions and limitations, the Deputy Director General stated that thanks to the many studies that the Committee had requested on all the aspects of that subject, there was a very precise panorama of all the different legislations and regimes in Member States. She stated that the Committee would have new presentations during that session, including Professor Daniel Seng's final version of the study on exceptions and limitations for educational and research institutions, as well the status report by Professors Blake Reid and Caroline Ncube on the on the rights for persons with other disabilities. The Deputy Director General indicated that there had been two other studies in the past, one on exceptions and limitations for libraries and archives, and the other on exceptions and limitations for museums. Together with the nine other studies that had been carried out for the SCCR in previous years, that series of studies was the broadest comparative study of exceptions and limitations that presently existed in the world. The Deputy Director General stated that based on her conversations in the previous weeks, what was a common objective was access to education, to knowledge and to culture. The Deputy Director General wished to build on that consensus and to overcome the differing views on the modalities. Together with the Member States, professionals and representatives of Civil Society, she was committed to finding innovative solutions that were pragmatic and that would benefit all the stakeholders, whether public or private. The Deputy Director General Indicated that it was essential that the Committee met those challenges together, as that would mean access for all. As there was a growing demand for including emerging issues on the Agenda, there were two proposals that would be examined under the item "Other matters": a proposal from GRULAC for Copyright Related to the Digital Environment and a proposal from the Delegations of Senegal and the Republic of Congo to include the Resale Right on the Committee's Agenda. On the following Friday morning, Professor Richardson would present on the resale right, and that afternoon, would be the discussion on the GRULAC proposal. The Deputy Director General indicated that the conversations on those proposals would not be exhaustive and that the Committee would have to decide on what the follow-up to those two proposals would be. In closing, the Deputy Director General wished the delegates very good discussions in the course of that week, and reiterated that she remained committed to contributing to the success of the Committee's work.

8. The Chair thanked the Deputy Director General for her opening address and her enthusiasm in encouraging the work of the Committee, as they worked to achieve concrete results in the various items of the Agenda. The Chair acknowledged and thanked the Vice-Chair, and stated that what was proposed was for the Member States to continue to work on all subjects of the draft Agenda. The Chair informed the delegations that discussions would be based on all working documents considered by the Committee at the Thirty-Second Session of the SCCR, as well as documents and proposals submitted for that session. For the schedule of the work, the Chair announced that it was proposed to divide the meeting time equally between the exceptions. The Chair requested the Secretariat to review the schedule for the week.

9. The Secretariat thanked the Chair and introduced the Copyright Law Division, which it stated, were there to assist the Committee. The Secretariat discussed the proposed schedule and confirmed that it would announce the schedule for each day, as the meeting went along.

AGENDA ITEM 2: ADOPTION OF THE AGENDA OF THE THIRTY-THIRD SESSION

10. The Chair opened Agenda Item 2, adoption of the Agenda of the Thirty-Third Session of the SCCR as included in Document SCCR/33/1 Prov. With no objections or comments, the Committee adopted the Agenda.

AGENDA ITEM 3: ACCREDITATION OF NEW NON-GOVERNMENTAL ORGANIZATIONS

11. The Chair opened Agenda Item 3, Accreditation of new non-governmental organizations (NGOs). The SCCR had received new requests for accreditation, which were contained in Document SCCR/33/2, and were requests made by the African Library and Information Associations and Institutions (AflIA), the Canadian Federation of Library Associations (CFLA), the European University Association (EUA), the *Federacion de Musicos Asociados* (FEMA) and the National Library of Sweden (NLS). With no objections or comments from the floor, the Committee approved the accreditations of the new NGOs.

AGENDA ITEM 4: ADOPTION OF THE REPORT OF THE THIRTY-FIRST SESSION OF THE SCCR

12. The Chair moved to Agenda Item 4, the adoption of the report of the Thirty-Second Session of the SCCR. As there were no comments, the Chair invited the delegations to send written comments or corrections to the Secretariat, and invited the Committee to approve document SCCR/32/5. The Committee approved document SCCR/32/5.

OPENING STATEMENTS

13. The Chair invited Regional Coordinators to deliver their opening statements.

14. The Delegation of India, speaking on behalf of the Asia Pacific Group, expressed its confidence in the Chair and thanked the WIPO Secretariat for its work. The Delegation stressed the importance of the Committee in dealing with the protection of broadcasting organizations, in dealing with the limitation and exceptions for libraries and archives and in dealing with the exceptions and limitations for educational and research institutions for persons with other disabilities. The Delegation indicated that those three issues were of great importance to their group, and that in terms of the level of discussion on those issues since the Twenty-Seventh Session of the SCCR, it would not be wrong to say that the SCCR was facing difficulties, in as far as coming to an agreement, on how to proceed with some of those agenda items. The Delegation believed that in order to further the Committee's work, it had to refer to

the work plan on those three issues, as discussed in the 2012 General Assembly guidance to the SCCR. The Delegation indicated its belief that those issues had not received an equal level of commitment by Member States. In the spirit of multilateralism, the Delegation fully supported the proposed work program and reaffirmed its commitment to negotiating a mutually acceptable outcome on all three issues before the Committee. The Delegation stated that based on the mandate of the 2007 WIPO General Assembly, members of its group would like to see the finalization of a balanced treaty, on the protection of broadcasting organizations, that protected the signal-based approach for cablecasting and broadcasting organizations in the traditional sense. The Delegation stated that exceptions and limitations were of critical importance to its group. The copyright system should be balanced and should equally take into account commercial interests in copyright and right holders, as well as other competing interests in copyright, including the public's interest in scientific, cultural and social progress and competition. Exceptions and limitations had an important role to play in the attainment of the right to education and access to knowledge. Actualization of which in many developing countries was hampered due to lack of access to relevant educational and research material; however, there was no denying the fact that some divergence on how exceptions and limitations should be approached existed among Member States. It was unfortunate that absence of adequate will to discuss and develop the two exceptions and limitations before that Committee had resulted in a stalemate of its work. The Delegation hoped that all Member States would engage constructively in that session so as to be able to develop a mature text. The Delegation stated that it had taken note of the proposal submitted by GRULAC in the Committee's Thirty-First Session, to discuss the current digital environment and copyright interface, and that members of the Asia Pacific Group would make interventions in their national capacity under that agenda item. As the same Committee which facilitated the Beijing Treaty and Marrakesh Treaty, the Asia Pacific Group was optimistic that the noble intentions and right will, would pave the path for the development of appropriate international instruments on all three issues soon. The Group looked forward to productive results and tangible progress in that session.

15. The Delegation of Chile, speaking on behalf of the Group of Latin American and Caribbean Countries (GRULAC), thanked the Chair and the Secretariat for organizing the meeting. GRULAC supported the work of the Committee and further reiterated its readiness to work constructively on the issues on the Agenda, for that meeting. For GRULAC, the work of the SCCR was of the utmost importance and it supported continuing that work with a balanced program that was inclusive of exceptions and limitations for libraries and archives, exceptions and limitations for educational, teaching, and research institutions, broadcasting, and the GRULAC proposal of analysis of copyright in the digital environment. GRULAC hoped to balance the discussions of those issues that addressed the interests and priorities of all Member States. The issue of exceptions and limitations had been promoted by GRULAC and its Member States from the outset. In order to reach effective solutions with regard to problems affecting libraries and archives around the world, GRULAC, in particular, supported an open and frank discussion on limitations and exceptions for libraries and archives that did not prejudice the nature of the outcome of the discussions. GRULAC was very interested in the debate on proposals submitted by the Delegations of Brazil, Ecuador, Uruguay, India, and the African Group. In order to promote work on that topic, GRULAC supported further discussions based on the Chair's proposal. Furthermore, GRULAC looked forward to the discussion of Document SCCR/33/4, submitted by the Delegation of Argentina. With regard to the limitations and exceptions for educational and research institutions and people with other disabilities, GRULAC looked forward to the continuation of Professor Daniel Seng's presentation as well as discussion on the Chair's proposal. The Delegation was also grateful for Professor Reid's preliminary presentation on other disabilities. GRULAC reiterated its willingness to continue discussions on broadcasting organizations, with a view to update their protection following the signal-based approach. The Delegation hoped to continue the discussions based on the text proposed by the Chair. GRULAC was interested in considering the proposal submitted by the

Delegations of Argentina, Colombia, and Mexico, contained in Document SCCR/33/5. The Delegation hoped that progress would be achieved in the discussion, with a view to conclude the work. GRULAC also hoped to continue discussions on the basis of Document SCCR/31/4, proposed analysis of copyright related to the digital environment. GRULAC indicated that it wished to propose a discussion on the new challenges arising from the use of protected intellectual property works in the digital environment within Committee. The Delegation welcomed the exchange of views amongst Member States on its proposal, and suggested that in order to continue that subject, the Secretariat should be asked to study the progress made in the past ten years in Member States' National Copyright Legislation related to the digital environment. With regard to the Marrakesh Treaty, GRULAC was pleased to underline its importance. The Delegation stated that it continued to be committed to its application and effective implementation, and informed the Committee that on October 18 and 19 2016, the WIPO Subregional Workshop on the Effective Implementation of the Marrakesh Treaty was held in the City of Buenos Aires, Argentina and was hosted by the Copyright Office of the Ministry of Justice and Human Rights of Argentina, with the support of the Latin American Blind Union. State entities from Chile, Paraguay, and Uruguay participated, as well as the Accessible Books Consortium and International Federation of Library Associations, amongst others. The workshop facilitated the exchange of best practices in the production and distribution of accessible books among the countries represented, and analyzed a work plan of specific measures in the implementation of the Marrakesh Treaty. The Delegation stated that it appreciated the support provided by WIPO in the implementation of that activity and it looked forward to the continued support and cooperation of WIPO in that very important issue for its region. GRULAC announced that the regional project on Transparency, Accountability and Governance (TAG) for Latin American countries would take place in El Salvador between November 29 and 30. Through that activity, the Delegation hoped to contribute the national experiences of the region, to the WIPO process.

16. The Delegation of Latvia, speaking on behalf of the Group of Central European and Baltic States (CEBS) Group, expressed its confidence in the Chair and thanked the Secretariat for the preparation of the meeting. The Delegation stated that it continued to support a treaty on broadcasting organizations and that it was committed to the work of the Committee in that area. The Delegation thanked the Chair for preparing Document SCCR/33/3, Revised Consolidated Text on Definitions, Object of Protection, and Rights to be Granted, and stated that it looked forward to constructive deliberations on the basis of that document. The Delegation reiterated its position that as the discussions on that treaty had been ongoing in that Committee for many years, the challenges faced by the broadcasting organizations, and the issues to be addressed by the contemplated treaty, had evolved significantly. The Delegation stated that although it was ready to engage in the discussions ahead in a positive and constructive manner, that it would continue to insist on creating a treaty that would take into account the present reality of different types of broadcastings made possible by rapidly evolving technologies and changes in the habits of consumers. In order to effectively protect broadcasting organizations, the Delegation stated that the outcome of the Committee's deliberations had to integrate those aforementioned elements. The Delegation stated that it continued to recognize the importance of the limitations and exceptions for libraries and archives, as well as for educational and research institutions, and persons with other disabilities, as they played an important role in economic, social, and cultural development. The Delegation stated that it was looking forward to the presentation by Professor Seng and it took note of the new proposals on a treaty on the protection of the broadcasting organizations put forward by the Delegations of Argentina, Colombia, and Mexico, and on limitations and exceptions, put forward by the Delegation of Argentina. The Delegation stated that it was ready to engage in discussions on the two proposals in Agenda Item 8.

17. The Delegation of Nigeria, speaking on behalf of the African Group, thanked the Chair and the Secretariat and reiterated its readiness to support the work of the Committee. The

Delegation stated that even though several years of successive SCCR sessions had come and gone, there had been no breakthrough in the Committee's negotiations on its three main Agenda topics: a treaty for the protection of broadcasting and cablecasting organizations from piracy, exceptions and limitations for library archives, and limitations and exceptions for educational and research institutions and for persons with other disabilities. The Delegation stated that it was necessary to have a clear vision and path for the Committee's deliberations on broadcasting and cablecasting organizations, and it reiterated its support for the early convening of diplomatic conference to protect signal piracy. In that context, the Delegation supported the overarching objective as indicated in Document SCCR/33/5 and as proposed by the Delegations of Argentina, Colombia, and Mexico, to expedite the Committee's work and convene a diplomatic conference no later than 2018. The Delegation stated that it was time to determine a path on the exceptions and limitations agenda of the SCCR. The Delegation expressed that the absence of a time frame for the Committee's discussions was not the most constructive path for its work. To facilitate understanding and accelerate the Committee's work, the Delegation supported the Chair's idea to hold regional and cross-regional meetings on the exceptions and limitations agenda of the SCCR. The Delegation expressed that the goal to breach the global knowledge gap was fundamental to the adoption of Sustainable Development Goal (SDG) 4, which sought to achieve lifelong learning opportunities for all. The Delegation stated that no one could question the logical chain that access to knowledge developed the individual who, in turn, developed his immediate environment, and further out, the global environment. The Delegation expressed its hope that all Member States and other participants would feel the burden of responsibility placed upon all stakeholders and the full membership of the United Nations to vigorously pursue attainment of the SDGs. For the SCCR, its contribution to that objective would be in the progressive conclusion of the Committee's current discussion on exceptions and limitations, in a manner that purposefully facilitated access to knowledge and information for underserved persons, and in line with the 2012 General Assembly decision on those issues. The Delegation stated that it looked forward to engaging constructively in the exceptions and limitations discussion, and looked forward to the presentations prepared for the Committee including on the study of copyright limitations and exceptional limitations activities of all 189 Member States of WIPO, the presentation by Professors Reid and Ncube on the scoping study for persons with other disabilities and the presentation on resale rights. The Delegation stated that it would join the discussion on those issues constructively, and that it looked forward to considering the new issues under Agenda Item 8, royalty retail rights by the Delegation of the Republic of Congo and Senegal and the other by GRULAC.

18. The Delegation of Turkey, speaking on behalf of Group B, thanked the Chair and the Secretariat for its work, and welcomed the Deputy Director General to the SCCR family. The Delegation noted that the Committee's meeting came after the conclusion of the WIPO's General Assemblies, which instructed the SCCR to continue its work. The Delegation acknowledged that since the Committee's last meeting, the Marrakesh Treaty had come into force, and that that was a significant and outstanding instrument of the SCCR. The Delegation stated that it continued to attach importance to the negotiation of a treaty for the protection of broadcasting organizations. To maintain its relevance, the Delegation stated that WIPO had to continue to hear the voices of the real world, and respond to the developing demands in various fields. The Delegation observed that no one questioned the significant economic value of broadcasting and as such, Member States had to find a relevant solution that would fit in the current environment. It was only Member States that could ultimately agree upon practical and meaningful solutions and maintain the relevancy of that Committee and the organization. The Delegation thanked the Chair for the proposal highlighting updated broadcasting text on definitions, objects of protection, and the rights to be granted. The Delegation highlighted that previous Committee discussions had helped it better understand the various perspectives and technological issues, that needed to be addressed. The Delegation took note of the proposal by the Delegations of Argentina, Colombia, and Mexico and looked forward to discussing it at the following session. On limitations and exceptions, the Delegation hoped that the Committee could find a consensual basis for further work. The Delegation underlined its desire for the

Committee to consider seriously the objectives and principles as proposed by the Delegation of the United States of America in SCCR/26/8 and SCCR/ 27/8, which it stated provided a common normative framework where no consensus existed. The Delegation noted the proposal by the Delegation of Argentina, with regard to limitations and exceptions for libraries and archives and limitations and exceptions for the educational and research institutions and for persons with other disabilities.

19. The Delegation of China thanked the Chair and Secretariat for its hard work and acknowledged the importance of the SCCR as a specialized Committee in WIPO. The Delegation stated that the agenda items up for discussion, the protection of broadcasting organizations, limitations and exceptions for libraries and archives, limitations and exceptions for educational and research institutions and for persons with other disabilities, were still major issues that needed the attention of all Member States. The Delegation stated that the lack of consensus in previous sessions was perhaps due to the different realities among Member States and that as a Delegation, it would continue to participate actively in the discussion of the agenda items. The Delegation stated its hope that different delegations, under the guidance of the Chair, would undertake substantial discussions in the spirit of cooperation, inclusion, mutual understanding, and in a flexible and pragmatic way. The Delegation highlighted the entry into force of the Marrakesh Treaty and appealed to Member States to pay also attention to the Beijing Treaty, which required 15 more ratifications for its entry into force. The Delegation stated its hope that Member States would provide the same support to the Beijing Treaty as they had provided to the Marrakesh Treaty.

20. The Delegation of the European Union and its Member States thanked the Chair and Secretariat for the preparation of that session and welcomed the Deputy Director General. The Delegation stated that it had been actively involved in the discussions on a treaty for the protection of broadcasting organizations. The Delegation stated that it was ready to continue to work constructively and that the treaty that the Committee was working to advance, should respond to both the current and future needs and interests of broadcasting organizations, and should reflect the development of technologies used by broadcasting organizations. During that session, the Delegation looked forward to an in-depth discussion on Document SCCR/33/3, the Revised Consolidated Text on Definitions, Object of Protection, and Rights to be Granted. The Delegation expressed that what was needed was a broad consensus as to the extent of the protection to be granted, so that the treaty could provide broadcasting organizations with adequate and effective protection. Considerable efforts had been made during previous sessions in order to build consensus on the main issues of a treaty, and that consensus should allow the Committee to agree on a meaningful text that reflected the technological developments that had occurred in the 21st Century. The Delegation reiterated its commitment to progressing towards the conclusion of a meaningful treaty. The Delegation stated that it would continue to contribute constructively to the discussions on exceptions and limitations. The Delegation stated that those discussions would be most useful if they aimed at a more thorough understanding of the issues at stake. At the same time, the discussions could also look at possible solutions and flexibilities among those already available under the framework of the existing international treaties. The Delegation expressed that useful work could be done in that Committee to provide guidance regarding the manner in which the international treaties were implemented in national laws. The Delegation stated its belief that the existing international copyright framework already empowered WIPO Member States to introduce, maintain, and update limitations and exceptions in their national legislation that could meaningfully respond to their local needs and traditions, while continuing to ensure that copyright was an incentive and a reward to creativity. The Delegation did not therefore see a need for any new and additional legally binding instruments in that area.

21. The Chair stated that as that SCCR meeting was the first since the Marrakesh Treaty entered into force on September 30, 2016, it was a moment to congratulate the Committee.

The Chair invited the representative of the beneficiaries of the Marrakesh Treaty, the World Blind Union, to take the floor.

22. The Representative of the World Blind Union (WBU) thanked the Chair for his central role in concluding the negotiations at the Diplomatic Conference in June 2013. The Representative stated that September 30, 2016 was an amazing day for millions of people around the world as the Marrakesh Treaty finally became operational. The Representative stated that although in the years to come, the Committee had an ongoing small role with the Marrakesh Treaty Council, because the following step was ratification, there was still a lot of work to be done, which went directly into the hands of the Member States and their copyright divisions and parliaments. The Representative noted that 80 Member States signed the treaty within the first 12 months, but only 25 had so far taken forward that intention and ratified it. What was important now that the Treaty was operational was to remember that only the print disabled of those 25 countries could actually have the benefit of the provisions of the Treaty. Many Member States sitting would be cross-border countries which would mean the blind and the visually impaired and print disabled in neighboring countries benefiting with books in accessible formats, but those communities in some countries, not being able to take up that benefit. The Representative urged all countries to take very seriously the urgent need to ratify and to domesticate that Treaty into their copyright law. The Representative stated that the World Blind Union had commissioned a very important guide to the Marrakesh Treaty, aimed specifically to assist in the domestication of the Treaty and aimed at supporting the copyright and intellectual property right divisions of government and the parliamentarians in the understanding of the domestication process. The Representative stated that treaty was specifically designed to break down barriers, as such the Oxford Community Press would be publishing that guide in the beginning of the following February.

23. The Chair thanked the Representative of WBU for its statement. The Chair stated that the Marrakesh Treaty did not end with its ratification, but that Member States had to build the infrastructure and the institutions that would actualize the Treaty's benefits to the beneficiaries.

AGENDA ITEM 5: PROTECTION OF BROADCASTING ORGANIZATIONS

24. The Chair opened Agenda Item 5 on the protection of broadcasting organizations. The Chair reminded the Committee of the mandate, which had been received during SCCR 32, to consider the textual proposals and clarifications made during that session with respect to definitions, object of protection and rights to be granted, with a view to integrate them in document SCCR/32/3. The Chair stated that document SCCR/33/3, titled, Revised Consolidated Text on Definitions, Object of Protection, and Rights to be Granted, was now before the Committee for consideration. The Chair stated that it would introduce the document after regional coordinators had given their statements on that agenda item. The Chair introduced Document SCCR/33/5, Note on the Draft Treaty to Protect Broadcasting Organizations, submitted by the Delegations of Argentina, Colombia, and Mexico for the Committee's consideration.

25. The Delegation of Latvia, speaking on behalf of CEBS, reiterated the great importance it attached to concluding a treaty on the protection of broadcasting organizations. The Delegation was of the view that it was crucial to find an agreement on the international legal instrument that would not only protect broadcasting organizations in the traditional sense, but would take into account the ever-rapidly evolving digital environment. The Delegation stated that a treaty protecting only a limited scope of transmissions would not sufficiently serve the interests of the broadcasters all around the world. The Delegation expressed that as the world was witnessing a trend where almost any television program could be watched through the Internet or on demand, all transmissions of broadcasting organizations over any other medium should be equally protected. The Delegation welcomed the Revised Consolidated Text on Definitions, Object of Protection, and Rights to be Granted, as the text illustrated the progress achieved during the previous sessions. The Delegation stated that it was looking forward to building the Committee's discussions on the latest revision of the text, which it hoped would advance the Committee's work towards an effective legal instrument. The Delegation urged all Member States to actively engage in discussions, with a view to finalize a treaty that had been extensively discussed for many years.

26. The Delegation of Chile, speaking on behalf of GRULAC, reiterated its determination to continue discussing radio broadcasting organizations, so as to achieve a signal-based approach to protection. The Delegation stated that it hoped to continue the discussions on the basis of the text submitted by the Chair, SCCR/33/3. The Delegation stated its interest in examining document SCCR/33/5, the proposal submitted by the Delegations of Argentina, Colombia, and Mexico.

27. The Delegation of Turkey, speaking on behalf of Group B, reiterated the importance of updating the international legal framework for the effective protection of broadcasting organizations in the 21st Century. The Delegation stated that the adoption of the corporate framework should be done in a timely manner, addressing the technological issues and realities that broadcasting organizations faced in the current world. With that in mind, for the sake of the facilitation of negotiation which the committee was tasked with, the Committee had to deepen its understanding of the unresolved legal issues. For that purpose, the continuation of discussions using the Chair's Revised Consolidated Text, as a starting point, was a pragmatic and an effective way forward. The Delegation expressed that it should be kept in mind that the critical element was the technical understanding and the knowledge of the practical issues, and the challenges, faced broadcasting organizations in the current world, and how that could be the basis of a treaty text. Therefore, due consideration had to be paid to that fact presently and in the future sessions of that Committee. The Delegation noted the proposal by the Delegations of Argentina, Colombia, and Mexico, and looked forward to discussing it at the following session.

28. The Delegation of Nigeria, speaking on behalf of the Africa Group, reiterated its support for a signal-based protection of broadcasting and cablecasting organizations. The Delegation stated that it looked forward to holding discussions based on the Chair's text on definitions of subject of protection and rights to be granted, including the new documents that had been submitted by the Delegations of Argentina, Mexico, and Colombia. The Delegation hoped that that Session of the SCCR would determine a time frame for the conclusion of that agenda item and the convening of a diplomatic conference to adopt a treaty for the protection of broadcasting and cablecasting organizations.

29. The Delegation of India, speaking on behalf of the Asia Pacific Group, stated that it supported the development of an international treaty, for the protection of broadcasting organizations, as per the 2007 General Assembly mandate, which was agreed upon during the Twenty-Second Session of the SCCR and which was later reiterated in the Forty-First General Assembly in 2012. The Delegation supported attempts to reach agreement based on the signal-based approach for broadcasting and cablecasting organizations in the traditional sense. The Delegation expressed that it was committed to working to achieve a balanced text, cognizant of interests and priorities of all stakeholders. The Delegation believed that adhering to the original amendment, without introducing any new layers of protection, would facilitate achieving the desired balance between the rights and the responsibilities of the broadcasting organizations. The Delegation stated that it would continue to participate in all consultations, with a view to finalize a treaty on the protection of broadcasting organizations in the traditional sense, by reaching consensus on outstanding issues and taking into consideration concerns of all Member States

30. The Delegation of China thanked the Chair for the consolidated text, which was based on discussions had by Member States and NGO's at the Thirty-Second Session. The Delegation stated that with the Chair's guidance, and with effort from all Member States, the Committee could achieve consensus. The Delegation stated that as it was very necessary to have an international treaty that provided protection to broadcasting organizations, it was pleased to see that most of the Member States thought it very necessary to have an international treaty in that regard. With regard to the scope of protection, object of protection, and other areas, the Delegation stated that the Committee had already achieved a consensus. The Delegation welcomed the proposal submitted by the Delegations of Argentina, Colombia, and Mexico, and reiterated its willingness to cooperate with the Chair and Secretariat, to have a full discussion on relevant issues and on SCCR/33/3. The Delegation stated that the Committee should seek for a satisfactory solution that would lead to a legally binding international instrument.

31. The Delegation of the European Union and its Member States stated that a treaty on protecting broadcasting organizations was a high priority for the European Union and its Member States. The Delegation was strongly committed to advancing work on the various issues identified in previous committee sessions. The Delegation stated that it looked forward to further progress on the basis of the Revised Consolidated Text on Definitions, Object of Protection, and Rights to be Granted which the Chair had prepared for that session. The Delegation stated that it had a number of technical and substantive comments on the text, and that it was ready for in-depth discussions on the issues set therein. The Delegation noted with interest the paper on a draft treaty to protect broadcasting organizations presented by the Delegations of Argentina, Colombia, and Mexico. With regard to suggestions for working methods contained in that paper, the European Union and its Member States did not believe that the pace of convergence could be forced by convening at that stage, additional meetings. The Delegation was prepared to continue to follow an open, constructive, and flexible approach that focused the discussion at that stage on the main elements of a treaty and on those aspects that seemed to indicate more convergence among delegations. The Delegation stated that the Committee's work should result in a meaningful treaty that reflected the technological developments that had occurred in the 21st Century. In particular, it believed that transmissions of traditional broadcasting organizations over computer networks, such as simultaneous transmissions, warrant international protection from acts of piracy. The Delegation expressed that as it had stated in previous sessions of that Committee, it attached great importance to the adequate catalog of rights which would allow the necessary protection for the broadcasting organizations, against acts of piracy, whether they occurred simultaneously with the protected transmissions or after those transmissions had taken place. The Delegation stated that what was generally needed was a broad consensus as to the extent of the protection to be granted, so that a future treaty could provide broadcasting organizations evolving in an increasingly complex technological world, with adequate and effective protection. The Delegation hoped

that the considerable efforts that had been made during previous sessions would allow the Committee to find a solution on the main elements of a treaty.

32. The Delegation of Argentina thanked the Chair for its guidance and the Secretariat for organizing that session. The Delegation supported the statement made by the Delegation of Chile, on behalf of GRULAC. The Delegation stated that it attached a high priority to the protection of broadcasting organizations, and that it was grateful to the Delegations of Colombia and Mexico for cosponsoring document SCCR 33/5. The discussions on the updating of broadcasting organizations started in 1998 in that Committee, and although there were central pending issues, important progress had been made. In resolving those outstanding issues, it was essential to take into account technological change which had taken place in recent years and which had affected the way in which broadcasting organizations worked. Only a treaty would provide proper protection to broadcasting organizations. The Delegation stated that it was essential that efforts were made to streamline the work so as to have a basic proposal on a treaty for the protection of broadcasting organizations and to convene a diplomatic conference by spring 2018. The Delegation thanked the Chair for preparing document SCCR/33/3.

33. The Delegation of Nigeria aligned itself with the opening statement made by the African Group and its statement on Agenda Item 5. The Delegation thanked the Chair, the Secretariat and welcomed the Deputy Director General. The Delegation noted the entry into force of the Marrakesh Treaty, a positive development in WIPO since the Thirty-Second Session of that Committee. The Delegation noted that the record time of the Marrakesh Treaty ratification process, was indicative of what the global corporate community could achieve through that Committee, given the rights among Member States and all stakeholders. The Delegation noted that it was already advancing the process of the Marrakesh treaty. The Delegation expressed concern over the inability of the Committee to progress discussion on the protection of broadcasting organizations towards the fair implementation of a diplomatic conference. For four years running, the Committee had not been able to make any concrete recommendation on the matter to the General Assembly. There was, indeed, need for Member States to show greater commitment and political will to engage more positively in the discussion of that agenda item, to develop an international treaty to update the protection of broadcasting and cablecasting organizations in the traditional sense, in line with the mandates of the 2007 General Assembly. The Delegation looked forward to the discussion on document SCCR/33/3, which took into account textual proposals and clarifications made during the Thirty-Second Session by Delegations. The Delegation stated that it supported the call for an adoption of a definite work plan by the Committee with respect to that agenda item and with a view to achieving a proximate date for a diplomatic conference.

34. The Delegation of the Russian Federation encouraged the Committee to speed up its work, as everyone, including the rights holders, was waiting for a new treaty. The Delegation stated that as the Committee had been working on that text for 16 years, unfortunately, many things were already out of date. The Delegation expressed that the Committee had to agree on a treaty that would take into account the new technologies developing in society. The Committee had a unique opportunity to adopt a treaty that would satisfy all parties and stakeholders in society. If the Committee did not include in the new treaty those new information technologies, then it would be adopting a treaty that had long become obsolete. Nonetheless, bearing in mind the importance of that treaty for all countries, the Russian Federation stated that for the purpose of achieving a common goal, it was prepared to search for a compromised proposal. The Delegation stated that the document was useful in speeding up the work of the Committee and hoped that by 2018, the Committee would have achieved a compromise that would lead to the convening of a diplomatic conference to adopt a new treaty on broadcasting organizations.

35. The Delegation of Iran (Islamic Republic of) congratulated the Chairman and thanked the Secretariat for its hard work. The Delegation aligned its self with the statement delivered by the Delegation of India, speaking on behalf of the Asia Pacific Group. The Delegation thanked the Chair for preparing the Revised Consolidated Text on Definitions, Object of Protection, and Rights to be Granted which it believed offered the Committee a good opportunity to make progress. The Delegation stated that in accordance with the 2007 General Assembly mandate towards developing a legal framework for the protection broadcasting organizations against signal piracy, the subject of signal-based protection of broadcasting organizations in the traditional sense, was of the high importance. The Delegation argued that in order to balance the treaty for the benefit of right holders, broadcasters, and society at large, the Committee should not restrict society's free access to knowledge and information. In that context, there should be a balance between the interest of creators, the interests of the public, and the interests of the broadcaster. The Delegation stated that the Committee should avoid guaranteeing additional rights that would subject additional costs to the public and affect access to broadcasted content.

36. The Delegation of Japan thanked the Secretariat for its efforts towards the organization of that session and thanked the Chair for the preparation of document SCCR/33/3. The Delegation stated that during the previous Committee session, the Committee had a fruitful discussion on substantive issues, based on the consolidated text prepared by the Chair, and had made some progress toward achieving a common understanding on those issues. The Delegation expressed that since the Committee was hoping for the adoption of a broadcasting treaty at the earliest opportunity, it hoped that further progress would be made during that session, in order to convene a diplomatic conference that would lead to the adoption of a treaty.

37. The Delegation of Chile stated that with respect to broadcasting organizations, Chile had recently experienced a change in its telecommunications authorities. The Delegation stated that Chile was evaluating the implications, at the national and international level, of the matters under discussion in that Committee. The Delegation stated that it maintained the same position it had expressed in previous sessions on that item, and that it would closely follow the discussions.

38. The Delegation of the United States of America thanked the Chair and the Secretariat for its hard work and welcomed the Deputy Director General. The Delegation stated that it had come prepared to work on the Chair's Revised Consolidated Text on Definitions, Object of Protection, and Rights to be Granted, a document that looked like a comprehensive framework for discussion. A few topics that had been mentioned at the last session of the SCCR, and invited the attention of the Chair and other Delegations, to take a look at those topics as well. Time permitting, it would like to discuss those topics on the chart that had been provided by the Chair at the previous session on beneficiaries of protection, the term of protection, technological protection measures, and rights management information. It stated that in the post-election cycle, as it moved through the orderly process of transition from one administration to another, it would provide an analysis of the broadcasters treaty agenda item, taking into account, as comprehensive it could, the traditions in legal conditions around the world and applicable laws at the national level with respect to broadcasting protection, the rapid and continuing changes in broadcasting technology, and, of course, the viewpoints of all stakeholders that were implicated in that treaty initiative.

39. The Delegation of South Africa aligned itself to the statement made by the Delegation of Nigeria. The Delegation expressed that like many other countries in that room, it was keen to see tangible progress in the Committee, in line with the 2007 mandate to address signal piracy. The Delegation stated that it was cognizant of the delicate balance that needed to be maintained to avoid granting additional rights but that it was encouraged by progress that had been made in bridging gaps.

40. The Delegation of Indonesia thanked the Chair for preparing document SCCR/33/3, and expressed its stand that discussions and any decisions on the protection of broadcasting organizations should be based on the 2007 General Assembly mandate to provide protection on the signal-based approach for cablecasting and broadcasting organizations in the traditional sense. It was ready to engage constructively and was ready to reach a common understanding on the key aspects in the protection of broadcasting organizations. Traditional broadcasting remained a central mechanism for access to information, knowledge, and culture, particularly in developing countries and nations like Indonesia. It had a lot of remote islands, and remote areas that heavily relied on traditional broadcasting for access to information. Therefore, from a development prospective, the protection of broadcasting organizations should not create additional costs for the public and affect broadcasting content in developing countries. The intellectual property rights of broadcast were a developmental issue that required careful balancing.

41. The Chair stated that document SCCR/33/3 was a revised consolidated text that was inclusive of Member State observations and discussions from previous documents. The Chair stated that the document maintained the three sections that had been in the structure from the beginning. The first section was a definitions section, which contained the definitions of programme current signal, the definition of programme, the definition of broadcasting, the definition of broadcasting organization, the definition of transmission, the definition of near transmission, a title for the definition of deferred retransmission, and the definition of pre-broadcasting signal. The two last definitions were in brackets because they're inclusion was under ongoing discussion. The first definition, which was the programme current signal, was the object of protection of the treaty. Following the signal-based approach that was mentioned in the General Assembly mandate, the Committee started to use the term "signal," which specifically referred to the signal that carried programmes and that had specific content. It was important that the Committee agree that that would be the main object of protection, the programme current signal. On the second definition of "programme," since the Committee had opted for the definition of "programme" current signal as the object of protection and which appeared to have its own definition of "programme," thus there were no alternatives in the definition of "programme" that were reflected in the document. On the third definition, "broadcasting," there were two alternatives. Alternative A dealt with the traditional definition of "broadcasting," which, with some clarifications, took into account similar definitions that were used in previous international instruments, to mainly mean the transmission made by wireless means. Since there was some concern not to change the traditional definition of "broadcasting," expressed by different delegations, there appeared the need in that alternative to have a separate definition for cablecasting, including wire transmission. Alternative B dealt with having an inclusive definition of "broadcasting," either by wireless means or any other means for reception by the public, of a programme carrying signal. The advantage of that new technologically neutral definition of "broadcasting" was expressed by some delegations in that broadcasters use different techniques for transmission and it was not limited to the so-called traditional means or wireless means. In that regard, with a more inclusive definition of "broadcasting," there would not be a need to make clarifications anytime "broadcasting/cablecasting" was used. In that definition the Committee had to find a way to deal with the legitimate concerns expressed by those delegations who wanted to clarify the treatment that was constitutionally or by national regulatory made for cablecasting. The more inclusive definition of "broadcasting" would provide the opportunity to clarify those specific concerns. The definition of "broadcasting organization," was based on Member State opinions and highlighted in it was the responsibility for broadcasting, including assembling and scheduling the programme carried on the signal. The Chair stated that there remained to be added, a clarification that the topic of transmission by networks did not fall under the definition of a broadcasting organization. There was a proposal of an agreed statement which stated that for the purpose of that treaty, the definition of "broadcasting organization" did not affect the contracted parties' national regulatory framework for broadcasting activities. The definition of

"retransmission," included two alternatives. Alternative A of "retransmission" was a broader scope of the definition and it referred to transmission by any means or any medium. Alternative B of "retransmission" was a more restrictive definition of "retransmission," limiting it to the simultaneous and near simultaneous transmission. The definition selected for retransmission would have an implication on the rest of the treaty, but it does not impose what is there is going to be covered by the whole provisions of the Treaty. On the definition of "near simultaneous transmissions," it was necessary to define a transmission that was delayed, only to the extent necessary to accommodate time differences or to facilitate a technical transmission of the programme-carrying signal. The Committee did not have a definition for "deferred retransmission," and that it was waiting for suggestions, which would have an impact on what the Committee was discussing. The definition of "deferred retransmission" should not be what is already encompassed in the definition of "near simultaneous transmissions" as there was a delay in that definition. The delay was necessary to accommodate time difference or to facilitate technical transmission. As such, the "deferred retransmission" should cover something that is deferred for sure but not for those reasons expressed in the previous definition. The definition of "preferred cut signal" was a combination of the common elements of the previous contributions on that regard. The second section of the treaty, the object of protection, had not changed but had some alternatives in some of the provisions. The protection on the treaty extended to the programme-carrying signals. The clarification that the provision of the treaty would not provide any protection in respect of mere retransmissions, and that was very important because at some point there was a confusion regarding the issue of cable distribution which is an activity that does not involve editorial activity. The clarification helped with the understanding that there would be no protection with respect to mere retransmissions. There were two alternatives in the third paragraph of object for protection. Alternative A stated that there would be protection for simultaneous and near simultaneous transmissions. Alternative B, extended the scope of protection, not only for simultaneous or near simultaneous transmissions, but also to deferred transmissions including the transmission that allowed members of the public to access it from a place and at a time individually chosen by them. Since there was an extension of the scope of protection in Alternative B, there was also a possibility to limit such protection, giving flexibility to those jurisdictions who have not decided to limit deferred retransmissions. In the third section of the treaty, rights to be granted, there were alternatives in both paragraphs. Alternative A gave the right to authorize or prohibit the retransmissions that is whatever retransmissions were covered in the second section. The first proposal in that section gave the broadcasting organizations the right to authorize or prohibit those kinds of retransmissions, and that alternative did not include the right to authorize or prohibit the making available to the public of the broadcast. Alternative B limited the set of rights to the right of prohibit, which it highlighted was the main difference between Alternative A and B. Alternative A was the right to authorize or prohibit, whilst Alternative B was the right to prohibit in relation to the protection of pre-broadcast. Alternative A gave the right to prohibit the unauthorized transmission of their pre-broadcast signal, while the Alternative B suggested a general provision stating that broadcasting organizations should enjoy adequate and effective protection for their pre-broadcast signals.

42. The Delegation of Argentina stated that it was essential that the future treaty be suited to the new technologies. The Delegation expressed that cable transmissions, deferred transmissions and those transmissions that broadcasting organizations did over the internet, had to be included. That meant making available the transmissions so that the public could have access to them at a time and in a place that they chose. Regarding the definitions of object of protection and rights to be granted contained in SCCR/33/3, the Delegation stated that in the definition of broadcasting it preferred Alternative B because it was technologically neutral and included cablecasting. The Delegation stated that in its document, the last sentence in square brackets had to be deleted, and in response the concerns expressed by a number of delegations, was open to hearing some suggestions. The Delegation stated that it welcomed the agreed statement on the definition of broadcasting organization. Regarding the definition of retransmission, it supported Alternative A, which included simultaneous, near simultaneous or

deferred retransmissions. And regarding the object of protection, the Delegation was in favor of Alternative B providing it included deferred transmission, meaning transmission made in such a way that members of the public may access it from a place and at the time individually chosen by them. On "rights to be granted," the Delegation was in favor of Alternative A, which authorized or prohibited. The Delegation stated that if the Committee would progress as planned, it was also open to discussing other outstanding issues, such as the ones expressed by the Delegation of the United States of America. The Delegation stated that the Committee should make progress on exceptions and limitations towards a future treaty as that will offer a solution to concerns expressed by Delegations such as Indonesia and Iran over access to education and information.

43. The Chair thanked the Delegation of Argentina for its statement. The Chair stated that, in the previous session, it had prepared a chart titled "other issues," on which were options proposed in previous submissions by different delegations. The Chair opened the floor for comments on the Revised Consolidated Text on Definitions, Object of Protection, and Rights to be Granted and on the document submitted by the Delegations of Argentina, Colombia, and Mexico.

44. The Delegation of Iran (Islamic Republic of) stated that concerning the Revised Consolidated Text on Definitions, Object of Protection, and Rights to be Granted, on the definition of broadcasting, the Delegation supported Alternative A, which consisted of two different paragraphs defining broadcasting and cablecasting. The Delegation stated that Alternative B, which included the expression "or any other means" was a vague and undefined option. The Delegation expressed its preference that the possible treaty be restricted to existing technologies and refrain from establishing some regulation concerning future and unpredictable technologies. On "the right to be granted/protection" the Delegation was of the view that Alternative B was the more appropriate option.

45. The Delegation of the European Union and its Member States stated that it had a number of comments and questions on the Revised Consolidated Text on Definitions, Object of Protection, and Rights to be Granted, and on the document proposed by the Delegations Argentina, Colombia and Mexico of which it read with great interest. On the proposal by the Delegations Argentina, Colombia and Mexico stated that it had a number of questions and comments on Paragraph 4 second subparagraph which referred to the fact that "deferred retransmissions may include extra material on news, additional interviews," on "and the latter should apply regarding whether the transmissions are closely related to broadcasting or cable broadcasting by a broadcasting organization," and further on "that deferred retransmission should be referred as" basically an on-demand transmission. The Delegation stated that there were a number of issues regarding the object of protection. In the object of protection, the Delegation stated that there were various transmissions that were protected and that needed to be protected. The Delegation stated that Paragraph 1 of the working document, on object of protection, set the minimum protection, referred to as protection of programme-carrying signals. As the discussion was on traditional broadcasts, the Delegation stated that in reality, that should be protection of broadcasts, which was based on the definition of broadcasting. In Paragraph 3, object of protection, there were further levels of protection. In Alternative A, there was protection of simultaneous and near simultaneous transmissions, while in Alternative B, there was simultaneous, near simultaneous and deferred transmissions. The Delegation stated that it was important either in the definition of simultaneous, near simultaneous or deferred to indicate that those were simultaneous, near simultaneous and deferred transmissions of broadcasts. The Delegation stated that in terms of protection for broadcasts, there was protection for simultaneous, near simultaneous and deferred transmissions for broadcast organizations' broadcasts. If the definition of deferred transmission proposed by the Delegations of Argentina, Colombia and Mexico, included on-demand transmissions, then the link between those transmissions and the original broadcast transmissions would be clear. The Delegation expressed that as long as the correct elements were there, that it was flexible with the section in

the document that presented alternatives for broadcasting and cablecasting or broadcasting alone. Following the statement of the Delegation of Iran (Islamic Republic of) the Delegation expressed that in Alternative B, where there was broadcasting, it would be clearer to say that broadcasting means the transmission either, by wire, or by wireless means, rather than "by any mean." In order to have definitions that distinguished traditional broadcasting from other forms of protected transmissions, something that was important to protect in that treaty, it was important that those additional transmissions of computer networks, did not constitute broadcasting. The Delegation stated that it wanted to protect computer network transmissions through provisions in the object of protection. In the broadcasting organization definition, where it referred to programming, it should refer to programmes because that was the defined term. The Delegation stated that that should read assembling and scheduling of programme-carrying signal. The Delegation expressed that the addition that was in brackets was not needed because that clarification already existed in the broadcasting. The Delegation stated that it would like to better understand the proposed agreed statement on national regulatory framework, and what exactly would be the intended effect of such a statement. For the definitions of retransmission, the Delegation stated that it had a preference for Alternative A but that it was open as long as both simultaneous and near simultaneous and deferred retransmissions were then subject to the rights granted in the previous section. Wherever "deferred retransmission" was included in the definition of retransmission or whether it was a separate definition the both had to be covered in the section on the rights granted. The Delegation stated that in the definition of retransmission, it would be clearer to indicate that it was a transmission for the reception of the public by any means of a broadcast rather than the original broadcasting organization. The Delegation suggested that in both options of the definition of retransmission, to replace "programme-carrying signal" with "broadcast" and "someone authorized by it" to "an entity acting on its behalf". The Delegation stated that for the possible definition of deferred transmission, it should be transmission and not retransmission without any limits in it being delayed in time. The Delegation stated that that definition could also include a transmission made in such a way that members of the public may access it from a place and at a time individually chosen by them. As such, the definition of deferred transmission would include transmissions delayed in time and also on demand transmissions. The Delegation stated that as indicated in Paragraph 1 of object of protection, programme-carrying signals should be replaced by broadcasts so as to ensure that the protection granted extended only to broadcasts and pre-broadcast signals. The Delegation suggested that Paragraph 3, in both Alternative A, and Alternative B, it should be simultaneous or near simultaneous transmissions of their broadcasts. The Delegation stated that based on what was raised by the Delegations of Argentina, Colombia and Mexico there were two kinds of on-demand transmissions which were related to broadcast. One is an on-demand transmission of a broadcast and the second is an on demand transmission of certain material which had not been previously broadcast but was closely linked to the broadcast material. For consistency with the rights, the Delegation stated that at the end of the paragraph starting with "the notwithstanding Paragraph 2 above," there should be an addition that read "as if these transmissions were broadcasts." The Delegation expressed that another issue it had raised at the previous session was the issue of Paragraph 2 in the object of protection. There was text stating that "provisions of this treaty shall not provide any protection in respect of mere retransmissions," and the Delegation wanted retransmissions of broadcast signals to be protected. The Delegation stated that in situations where third parties retransmit broadcasting signals of broadcasting organizations, those retransmissions should be protected. The Delegation stated that it was not the retransmitting entities that should have that right, as it was a right that should be reserved for the broadcasting organizations. In terms of rights to be granted, the Delegation stated that it was necessary to have a strong right that would be granted to broadcasting organizations, as was highlighted in Alternative A, on the right to authorize and prohibit. The Delegation stated that it should be the right to authorize and prohibit all kinds of retransmissions, whether simultaneous, near simultaneous, deferred or on demand. On pre-broadcast signal, the Delegation stated that it was open to discussing what the best way of addressing that issue was.

46. The Chair thanked the Delegation of the European Union and its Member States for its comprehensive view and comments regarding document SCCR/33/3 and commented that when the term programme-carrying signal was proposed, it had in mind that programme-carrying signal was broadcast. It stated in reference to the terms retransmissions and transmissions, there was a suggestion to add "transmission of" in reference to transmission of programme carrying signals or retransmission of programme carrying signals. The Chair stated that it wished to find a consensus on what term it would use.

47. The Delegation of the European Union and its Member States clarified that the proposal of using broadcast did not exclude the use of programme carrying signals and the definition, as the definition of programme carrying signal was used in the definition of broadcasting. As such, the definition of broadcasting meant the transmission, either by wireless or by wire of a programme carrying signal. That was why it thought it correct to use that definition of programme carrying signal in the definition of broadcasting so as to have a clear object of protection defined. If the treaty had a paragraph that stated that there was protection granted to programme carrying signals, that would mean to any programme carrying signals of a broadcast organization. That would question the necessity of having other paragraphs of that article as programme carrying signal was any kind of signal, whether it was by traditional means, whether it was by other means, whether simultaneous or deferred. Its proposal was trying to find the differentiation between different levels of protection. It supported the proposal made by the Delegation of the United States of America to discuss other issues like the ones in the chart, for example the technological protection measures, limitations and exceptions.

48. The Chair stated that when the Committee had drafted the term programme-carrying signal, it was conceived as the object of protection, as it was meant to protect that signal that carried a programme. The Chair stated that the Committee was ready for proposals that would help clarify what was the object of protection.

49. The Delegation of the Russian Federation stated that it had some doubts on the statement delivered by the Delegation of the European Union and its Member States. The Delegation stated that most of the Member States had agreed that the treaty would keep the word signal, as that was the interest of the treaty. The Delegation expressed that the statement of the Delegation of the European Union and its Member States brought confusion.

50. The Chair stated that some Delegations had already requested the Committee not to move from the signal based approach or signal based mandate and that the term programme-carrying signal was synonymous to a broadcast or a broadcast signal. That was why it was important to maintain the word signal.

51. The Delegation of Italy congratulated the Chair and Vice-Chair and that what was introduced as the programme carrying signal definition was its technical format. When the signal entered the net, its nature was changed. There were technically different types of signals including the broadcast signals and Internet signals. Concerning the definition of "programmes," it would be better to clarify that copyrighted programmes were not "any" programme. The Delegation suggested that it stated "which are protected by Copyright or related rights." Concerning protection for mere retransmission, it was in agreement with what the Delegation of the European Union and its Member States shared on that that it needed to be clarified that if retransmissions by third parties were authorized, then they should be protected. The Committee should look to see if the definition of retransmission was sufficient, otherwise it should cross out that reference altogether.

52. The Delegation of Nigeria stated that it was flexible with the Chair's definition of programme-carrying signal and that it supported Alternative B. For the last part, which was in square bracket, the Delegation believed that that was the most technologically neutral definition, and that it had the sufficient space necessary for Member States to implement that instrument. Regarding retransmission, it preferred Alternative B and was flexible on the definition of near simultaneous transmission. The proposed agreement statement was welcomed.

53. The Delegation of Mexico stated that the term "programme-carrying signal" as it understood it was a grammatical question. The Delegation stated that it understood the noun was signal and that the verb was carrying. The discussion was on the various ways of putting them together. The Delegation stated that the Committee could not exclude programme signals as the verb "carrying" needed to be included and object, programme, needed to be included as well.

54. The Chair stated that the discussion was to clarify the activity that was broadcasting and also to clarify the broadcast, not as the activity, not as the verb, but as another substantive, which was the object of protection. Regarding the term beneficiaries, the Chair clarified that there were three options including those that had the broadcast signal, those that had the broadcast signal transmission from the same contracted party and had headquarters in contracted parties, and those that had broadcast signals transmitted from other contracting parties. The Chair expressed that there were different views on the term protection. There was one view that referred to 20 and another to 50 and that it would be helpful clarify the term from 20 to 50 in that first option. The Chair stated that in defining the term, the second option was to refer to the domestic law. Regarding the column of "limitations and exceptions," the first option was to have a provision similar as the one that was contained in WIPO Copyright Treaty (WCT) and its mirror provision in WIPO Performances and Phonograms Treaty (WPPT) and the other option was to go back to Article 15 in the Rome Convention. The third option was to take the same definition the text used in Article 15 of Rome Convention but with definite exceptions. Regarding technical protection measures, the Chair stated that the first option was to use similar provisions as was one in WCT and WPPT. The other option would be protection against unauthorized encryption of an encrypted broadcast which was part of a submission made. The Chair stated that another option would be to have no provision on that regard. On the rights management information, the first alternative was similar to the provision contained in WCT and in WPPT. The Chair stated that the other option was to have a general mention of protection against removal or alteration of right management information or have no provision on that regard.

55. The Chair expressed that it would summarize what had been discussed during the informal stated that there had been a change in the order of definitions, with the definition of broadcasting being first, followed by the definition of programme- carrying signal and then the definition of programme. The definition of broadcasting would be independent the issue of cablecasting. That was achieved by adding the term, by wire or by wireless means, to the definition of wireless transmission, which was connected to broadcasting in a traditional way. It added to Alternative B a footnote concerning an agreed statement that stated that in the provisions of cablecasting and broadcasting, repetition should be avoided by having one definition of broadcasting and cablecasting. Alternative A was still under consideration. Regarding the second definition, the signal, there had been an interesting discussion on whether it was originally transmitted. On the definition of program, that definition had not received any changes. The definition of broadcasting organizations was in brackets as it was pending and it was agreed that that definition did not affect the national frameworks. On the definition of retransmission, the pending term was related to reauthorization in the retransmission, and that that was not considered convenient due to the situation of the authorization. There was also an issue of the term "any other entity" which could be observed in Alternative A. That term referred to that transmission that was made by any other entity rather than the original broadcasting organization. There were some alternative suggestions to that term for example the use of the term person, the use of the term organization. The Chair stated that as there was no agreement on that, it was still a term with no alternatives. Regarding the definition of near simultaneous transmission, that definition seemed to be clear and as the suggested definition covered most of the concerns, there had been no discussions on that. Regarding the definition of cablecast signal, as had been discussed, it was necessary to keep that phrase for a broadcasting organization or to an entity. On the discussion of the object of protection, there was a suggestion to have the object of protection as broadcast so as to have the programme-carrying signals and, not broadcast, as part of the object of protection. The Chair stated that that was there to clarify that the protection did not extend to the programmes contained therein. The other goal of that first paragraph was that the minimal object of protection of a treaty was going to cover the so-called traditional ways of broadcast. The intention of the second paragraph was to clarify that, for example, in the case of cablecasting, the cable distributors that were not engaged in activities and on flexibility, were not intended to be beneficiaries of the treaty. An interesting discussion had taken place on the third paragraph, particularly on the protection of simultaneous or near simultaneous transmission. The protection of simultaneous or near simultaneous transmission could be covered in a mandatory way in the treaty but that some delegations needed further consideration. The discussion on deferred transmission led to the discussion of the different deferred transmissions, for example, the linear deferred transmission, the catch up services made through the deferred transmissions and on-demand transmissions. Under further consideration were the deferred transmissions related to broadcasting, or closely related to broadcasting activity, which was for catch up services and linear deferred transmissions.

56. The Chair expressed that it would summarize what had been discussed during the informals but that it would not repeat what was previously discussed in the previous informals. The Chair stated that on rights to be granted protection, there were two options, the right authorize or prohibit, and the right to prohibit. There was a suggestion to use the language from previous, more recent, international treaties. There was also a suggestion to add that broadcasting organizations should have the exclusive right of authorizing. Some delegations had expressed their preferences for Alternative A or Alternative B. For the right to prohibit a common view had been expressed to have an option that would be in between Alternative A and B. Broadcasting organizations should have the exclusive right of authorizing, as was mentioned in the rights section and as was reflected in section number three. Some delegations had shown partial support for the first paragraph of Alternative A, and also for the second paragraph of Alternative B. On the second paragraph related to the protection of the pre-broadcast signal, there was a question of the word "own" and there was a last suggestion to add a phrase not only for broadcasting organizations, or those which have exclusive rights, but

to have clarity regarding the extent of the protection they would have in terms of the pre-broadcast signal. The Chair stated that the discussion reviewed that transmission over the computer networks could be there so as to clarify that it was a narrower definition of broadcasting. On the issue of the definition of broadcasting organizations, there was a sentence in brackets that the delivered programme carrying signal, exclusively by the computer network, did not fall under the definition of a broadcasting organization. The Chair stated that the discussion on that was still on going.

57. The Chair opened the floor to NGOs that had statements related to the topics that were being discussed.

58. The Representative of the Copyright Research and Information Center (CRIC) stated that as to the definitions, it supported the Chair's modification, especially the definition of broadcasting. The 2006/2007 General Assembly mandate stated that the scope of the treaty will be confined to broadcasting and cablecasting organizations in the traditional sense. Both Alternative A and Alternative B stated that addition of the wired "transmission over computer networks shall not constitute broadcasting." The definition of broadcasting organization did not need to have brackets. The Committee had not reached an agreement on what type of transmission should be protected, mandatory and/or optional, and some Member States had not stated their position. The mandatory protection plus option protection would be better under that circumstance. Regarding rights to be granted, that was the basic right of copyright with the main purpose of a broadcast treaty being to fight against piracy. Those two rights were a fundamental tool for fighting against piracy. In the case of pre-broadcast, there were many cases by layman that were stolen and uploaded on websites without authorization before broadcasting. That if that would be protected by the broadcast treaty, without adequate protection of broadcast signals, that would be as effective as a bucket without a bottom.

59. The Representative of Knowledge Ecology International, Inc. (KEI) stated that on the question of right to prohibit or authorize or the so-called positive or negative rights, the Representative hoped that the Committee would stick with the right to prohibit. That would be cases where if one had compulsory license, the exceptions on the right to authorize could make a bigger remuneration claim and would impact copyright owners in a negative fashion. Any efforts to give broadcasters strong or expanded rights and materially transmit, resulted in weaker and restricted rights for copyright owners. The main element of discussion in the Committee was on boundaries, on who the beneficiaries would be and what works would be affected and how. If the Committee was going to extend protections to material that originated on the Internet, and was downloaded on demand, it opened the door to a much broader and consequential treaty that had impacts far beyond the purpose of protecting traditional broadcast from signal piracy. It had not heard any workable way to expand the treaty to material originated on the Internet, and downloaded on demand. That stopped the treaty from creating a massive expansion of related rights that were contrary to the notion that copyright was used to determine the ownership of works. The Committee would need robust exceptions that would make the conclusion of that treaty even more difficult.

60. The Representative of Karisma Foundation stated that it wished to share a few examples that presented the dangers of the direction that the Committee was moving in terms of developing that treaty. It had identified a case of a Twitter user who was uploading content and whose account was blocked, due to supposed infractions of copyright and the retransmission of the Colombian football league. That person was sharing short videos from a TV screen, of football players and matches that were no more than 90 seconds. Although that was not a case which could represent a real economic detriment to the broadcaster, and although he was not a professional broadcaster and had less than ten followers on Twitter, his videos were removed. As the platform was allowing them to broach certain items, the force was disproportionate. As that individual had a disability, the blockage of his Twitter was also detrimental. The Committee needed to ensure that the instrument adopted protected measures which were very limited, and

that it ensured that rights were protected in the most minimal aspect, so as not to infringe on the rights of others.

61. The Representative of the Japan Commercial Broadcasters Association (JBA) stated that the issue of protecting broadcasting organizations had been seriously growing, since the beginning of that agenda item, over the last 18 years ago. Regarding the object of protection, the Committee needed further discussion on what type of transmission should be protected. It was concerned about a missing reference on the fixation of broadcast, and the right after fixation and it had expressed the importance and need of adopting a document that included the right to fixation or broadcast, and the right after fixation, as had already been proposed by several Member States in previous sessions. Adopting the right to fixation would prevent the ongoing piracy of broadcast signals, especially over computer networks. It hoped that the timetable for a diplomatic conference for the broadcast treaty would be made with mutual respect and understanding among Member States.

62. The Representative of Centre for Internet and Society (CIS) stated that it aligned itself with the statements made by KEI and the Karisma Foundation. The proposal by the Delegations of Argentina, Colombia and Mexico, was problematic, as it tried to extend the scope of the treaty to apply to Internet originated content and thus by extension, Internet transmissions. That notion had also manifested in the on demand material and catch-up services in the discussions. The broadcasting organizations, in the traditional sense only. It should as such be limited to the type of transmission exploited by traditional broadcasters, as stated by the Delegation of Iran (Islamic Republic of). Whereas the Delegations of the European Union, China, Argentina, Colombia and Mexico continued to speak of technological advancements to justify the expansion of the rights under the treaty, there was still no discussion on the inadequacy of existing international instruments to address those advancements and justify the broadcasters ask of an additional layer. Reiterating the Asia Pacific Group position, stated that the discussion of that treaty should be balanced and should take into account the rightholders, and equally important, should take into account other competing interests and copyright, including the public interests in scientific cultural, social progress and promoting competition.

63. The Representative of Asia-Pacific Broadcasting Union (ABU) stated that it had 280 members who wanted protection and it was important to protect traditional broadcasters who provided catch up service in the moment and who would provide technology service in the future. The proposal by the Delegations of Argentina, Colombia and Mexico was welcomed and should be considered by Committee, as should a diplomatic conference by Spring 2018.

64. The Representative of European Broadcasting Union (EBU) stated that it supported those delegations that had referred to the need to have a full treaty text on the table at the following meeting, as that would certainly facilitate and streamline a discussion. On the proposal made by the Delegations of Argentina, Colombia and Mexico, wished to refer to its concrete timetable and end date.

65. The Representative of the International Federation of Library Associations and Institutions (IFLA) stated that the proposed treaty would risk damaging the public interest unless several safeguards were put in place. It would not discuss exceptions and limitations, but those should be full, robust and ideally mandatory. It could not be the case that a new transmission of previously broadcast material created new rights. That would risk taking works out of the public domain with no benefit to the original creators. New rights of broadcasters should not make the search for all potential right holder more onerous and more likely to fail. That as the risk of incorporating the post-fixation right into the treaty. The solution was to keep any new rights to a minimum, both in terms of subject and scope to avoid any damaging term extensions, and to ensure that new rights were accompanied by robust set of reflections that were flexible and reasonable and were able to accept unforeseen changes in content and new use of content.

66. The Representative of Society of American Archivists (SAA) stated that for decades, archives had included not just paper records but also important sound and video recordings, many of which came from broadcasters. Those were invaluable documents for both cultural heritage and for protecting citizens' rights. The major events of our time were perceived by citizens in terms of videos, especially items that had been broadcast. Those were important cultural objects. So regardless of whatever measures were put in place to protect the broadcast signal for traditional broadcasters, it was essential that the new rights didn't end up, by accident or intention, adding any further layers on the copyright protection that already existed in the content. There was clear danger in any approach that attempted the rather impossible task of future proofing a treaty. It reiterated that any treaty on broadcasting should number one be focused on the presently known universe, two be technologically neutral and, three, shouldn't result in any additional residual layer of rights over the content either directly or via technological protection measures and it was imperative that work on broadcasting continue in parallel with meaningful work on exceptions.

67. The Representative of the International Federation of Journalists (IFJ) stated that it acknowledged the desire to co-define internationally, the rights that broadcasters had in many Member States already. It was concerned that the laudable and positive drive to be technologically neutral, accidentally created new rights. If the definition of a broadcaster included an organization which was first to put material out on the Internet, then effectively, the new right applied to practically everything, but a handwritten manuscript and a performance on the Stradivarius. The beneficiary of the eventual treaty had to be very carefully drafted to refer to traditional broadcasting organizations. If one wanted to reuse a broadcast, it would need to contact the broadcaster first before going talk to any of the authors or performers.

68. The Representative of Alianza de Radiodifusores Iberoamericanos para la Propiedad Intelectual (ARIPPI) stated that it supported the comments made by the Delegations of Colombia, Argentina and Mexico. Deferred transmission, simultaneous and near simultaneous transmissions had to be part of the objects of protection. It hoped to see a working plan and an agreement on the convening of a diplomatic conference.

69. The Representative of the Asociación Argentina de Intérpretes (AADI) stated that it would like the Committee not to infringe upon the human rights of individuals. The efforts carried out in that session should protect the rights professionals such as interpreters, musicians and other performers in terms of their human rights in the digital world. Many of those issues had been highlighted by the GRULAC document, SCCR/31/4.

70. The Chair thanked the NGOs for their contributions.

AGENDA ITEM 7: LIMITATIONS AND EXCEPTIONS FOR EDUCATIONAL AND RESEARCH INSTITUTIONS AND FOR PERSONS WITH OTHER DISABILITIES

71. The Vice-Chair introduced Agenda Item 7, limitations and exceptions for educational and research institutions and for persons with other disabilities, and announced that the Committee would hear a presentation of a study on that item. The Vice-Chair opened the floor to the Deputy Director General who had an announcement.

72. The Deputy Director General announced that to promote the widest possible public access to WIPO's publications and further its commitment to the dissemination and sharing of knowledge, WIPO had launched its new Open Access Policy. The Deputy General stated that WIPO offered extensive collections of publications that included empirical studies, reports, guides and other learning resources. Under that Policy WIPO provided free online access to all its publications and to other online content such as Flickr for photos and YouTube for videos. The Deputy Director General stated that to support the implementation of Open Access Policy,

WIPO would use the Creative Commons IGO Licenses, which it had helped develop since 2013, with a group of international organizations. Creative Commons licenses were a widely used and easily understood set of copyright tools, and model agreements, that facilitated access to the use of creative content. The Deputy Director General stated that moving forward, new publications created by WIPO would be licensed under the CC BY 3.0 IGO license.

73. The Vice-Chair stated that the study that the Committee was about to hear would provide clarity on issues that the Committee was going to be addressing in its statements and questions. The Vice-Chair stated that the study had started in October of the previous year and that it was under the leadership of Professor Daniel Seng, who had experience in the topic of limitations and exceptions. The first issue of that study was contained in SCCR/23/4 and included 136 member countries. The Vice-Chair noted that the study to be presented was very complete and included all WIPO Member States. The Vice-Chair stated that the Committee could ask questions to Professor Seng after his presentation, and that any corrections on information contained in the study could be addressed to the Secretariat. The Vice-Chair welcomed Professor Seng and gave him the floor.

74. Professor Seng made a presentation of the study, which he indicated was contained in 1009 pages. The presentation of that study can be found at (Wednesday, November 16, 2016 Afternoon Session): <http://www.wipo.int/webcasting/en/?event=SCCR/33#demand>

75. The Vice-Chair thanked Professor Seng for the presentation and stated that as figures did not lie, the use of statistics in such studies was absolutely decisive. The Vice-Chair stated that the study indicated that there was work to be done to ensure that intellectual property was the tool for education and research. The Vice-Chair opened the floor to delegations to ask Professor Seng questions about the presentation.

76. The Delegation of Nigeria, speaking on behalf of the Africa Group, thanked Professor Seng for his presentation. The Delegation stated that it had looked at the study with the educational exceptions of all 189 WIPO Member States. The Delegation stated that Professor Seng had framed the presentation by noting that education, in any society, was automatic and that notwithstanding the copyright systems, the special status of protection of right holders and copyright systems, and the use of work to promote and facilitate education, had been preserved. The Delegation stated that the question it had, was based on Professor Seng's thinking that the right to education was a human right. Noting that private and personal use was a very high percentage of the exceptions and limitations used by many countries, the Delegation asked Professor Seng to provide clarity on some of the areas that he had excluded from the study. The Delegation stated that Professor Seng did not delve into exceptions and limitations for private and personal use, and those that have to do with implementation of works for personal consumption and their use by natural persons. The Delegation stated that as Professor Seng highlighted, very strongly, that that was a very helpful exercise for self-education, for research, for social education, it wanted him to provide some insight into that.

77. The Delegation of Ecuador thanked Professor Seng for his study. The Delegation stated that it recognized that the study was useful. As it would like to analyze it in its entirety, on the section of compulsory licenses, the Delegation asked Professor Seng whether that covered free compulsory licenses or only compulsory licenses that provided for compensation.

78. The Delegation of Senegal thanked Professor Seng for his study that it believed was very informative on everything that could be done at the national level. The Delegation stated that it wondered whether it would not be useful to supplement the study by regional provisions. For example, there was in Africa, the Bangui Agreement, that contained provisions on exceptions that were very important, and that until recently, had worked as a supra national text. The Delegation stated that the text had been revised and now had the minimum standard status which acted as a law for certain African countries, that did not yet have basic laws on Intellectual Property.

79. The Delegation of Nigeria commended Professor Seng for his informative and comprehensive study. The Delegation observed that the section of the study that captured the provisions on limitations and exceptions for education in Nigeria, excluded provisions regarding compulsory licenses, which foreshadowed the copyright act. The Delegation desired to know whether there was any reason for that exclusion. As Professor Seng made an observation in his conclusion that, with respect to compulsory licenses, there was a need to interrogate the continued relevance of such provisions in national laws, the Delegation stated that it wondered what were the reasons for that. Was it because of the lack of use of the provisions, or was because not enough countries had included that in their national legislation.

80. The Delegation of Iran (Islamic Republic of) expressed its deep gratitude to Professor Seng for his comprehensive study and presentation. The Delegation stated that it wanted to know whether at that stage, the harmonization of the national legislation, concerning the exceptions and limitations for research and educational institutions, was a necessity for all Member States.

81. Professor Seng responded to that set of questions, and his response would be found at the webcasting link of WIPO: (Wednesday, November 16, 2016 Afternoon Session)
<http://www.wipo.int/webcasting/en/?event=SCCR/33#demand>

82. The Delegation of Chile thanked Professor Seng for his informative study. The Delegation stated that Professor Seng's categorization on the various areas of exceptions was based on the understanding that in the world today, the digital environment was ever more important. The Delegation wished to know what the relevance was, of all those traditional exceptions in the digital environment. The Delegation also wanted to know whether it was necessary to invent tools that went beyond the traditional ones, representing the majority of the legislations in the study.

83. The Delegation of Malawi thanked Professor Seng for his comprehensive study. The Delegation stated that as was evidenced in the study, most of the Member States already had provisions on limitations and exceptions in education, and what the Delegation wanted to know, was whether those provisions were adequate enough to cover educational needs. The Delegation stated that for countries in Africa specifically, the term that was used in some legislations was free uses. The Delegation wished to know if that term was something that fell outside fair use or fair dealings or if they were the same and just a difference in terminologies.

84. The Delegation of China thanked Professor Seng for his comprehensive, detailed and extensive study. The Delegation stated that it believed that study could be continued, so that copyright could play a greater role in education. The Delegation asked whether in the new digital environment, Professor Seng had more specific recommendations on limitations and exceptions for educational activities.

85. The Delegation of Argentina thanked Professor Seng for his exhaustive study. The Delegation asked whether there were any paid or remunerated licenses, paid by a university for example, that would have an impact on other countries. The Delegation wished to know whether there would not be an effect in another area where the students were testing.

86. Professor Seng responded to that set of questions, and his response would be found at the webcasting link of WIPO: (Wednesday, November 16, 2016 Afternoon Session)
<http://www.wipo.int/webcasting/en/?event=SCCR/33#demand>

87. The Delegation of El Salvador thanked WIPO and Professor Seng for the study. The Delegation stated that although it had limitations and exceptions already enshrined within its legislation, as it had doubts about educational exceptions and limitations, it wished to know if those educational limitations and exceptions were restricted to institutions that were public or nonprofit, or whether for profit organizations were also included.

88. The Delegation of the European Union and its Member States thanked Professor Seng for the presentation and exhaustive study. The Delegation noted Professor Seng's mention that the study did not touch upon some issues that were not accessible, or that were too difficult to take into account, or that were not relevant enough. On that note, the Delegation wished to know if Professor Seng had an idea on how to gain a better understanding on those issues.

89. The Delegation of Cameroon wanted to know what relationship Professor Seng could establish between his study and the publishing companies of those works. The Delegation stated that it was aware that access to education was often halted or slowed down, precisely because of the cost of the works, which were usually decided by the editing or publishing companies

90. The Vice-Chair opened the floor for NGOs to submit their questions.

91. The Representative of KEI stated that publishers had asked governments to incorporate binding norms in treaties and trade agreements to expand rights, extend terms, enhance enforcement, and restrict the use of exceptions through such measures as the three-step test. The Representative wanted to know why that type of harmonization was done, yet no efforts to protect educators and students, and to ensure that minimum standards for exceptions were implemented. The Representative also wanted to know why the 1971 Berne appendix had failed, and if that failure was because the procedures were unworkable. The Representative asked if the 1971 Berne appendix had been poorly designed for Internet-based works, and whether it should be updated to reflect the new digital technologies. The Representative wanted to know if remunerative and non-remunerative exceptions had different features and purposes. It asked whether some uses were better with non-remunerative, such as quotation, personal use, news of the day and in many countries library lending and classroom teaching exceptions, while in other cases a remunerative exception could permit broader use of works subject to compensation, such as in Nordic countries. The Representative noted that it had encouraged countries to consider using a combination of approaches depending on the purpose and the objectives of the exceptions.

92. The Representative of Communia thanked and congratulated Professor Seng on the study, which it stated would be very useful in comparing the various legal systems and in understanding the differences and similarities between them, and which would also go to further inform the discussions on copyright reform for education. Having done a non-exhaustive reading of the study, the Representative wished to ask some questions. The Delegation stated that Professor Seng had analyzed more than 1,500 exceptions or provisions and had discovered that some countries had as much as 32 provisions whilst others did not have more than one provision. Two years before then, the Representative stated that it had conducted a comparative study on educational exceptions in Europe, which led it to conclude that quantity did not mean quality nor did it mean more freedoms. The Representative stated that more provisions normally meant more restrictions and more provisions meant more interpretation problems due to the overlap of provisions. The Representative stated that what it found out in Europe was that specific provisions for various educational activities were more complex and

had much narrower scope than education exceptions in countries that only had one provision, and that used generic formulations such as use and anything. Moreover, those countries with numerous provisions seemed less prepared for the digital age and modern education than those with a single flexible open ended norm. The Representative wanted to know if Professor Seng came to the same conclusion, that a growing number of provisions normally meant more obstacles for education and not more educational freedoms. The Representative stated that Professor Seng concluded that, in the creation of educational exceptions, Member States had a good understanding of the limits imposed by international treaties. The Representative stated that based on its own research, although European countries respected the limits imposed by international treaties, their national laws did not take advantage of those limits. As such, the national exceptions and limitations that it had analyzed were far less generous than the international treaties and in the case of the European Union, far less generous than Europe's original directives. The exceptions and limitations were not technologically neutral, and did not benefit an open ended network of users and other fair educational uses. The Representative, as such, wanted to know if the countries that Professor Seng had analyzed were offering to their educators and students, the same educational freedoms provided by international treaties, or if they were being less flexible, covered less uses, and protected less beneficiaries than the treaties would allow. The Representative stated that it realized that Professor Seng had not analyzed exceptions and limitations dealing with translation adaptations and other alterations of protective words for educational purposes. The Representative stated that it found those to be essential, not only in the context of teaching assignments, but also to build upon existing works and create new educational resources namely in context of the OER movement. The Representative stated that it would appreciate if Professor Seng could explain the reasoning behind that decision. The Representative asked the Vice-Chair if the Open Access Policy that was adopted the previous day, would cover the data collected by Professor Seng. The Representative stated that as Professor Seng had used updated and translated versions of national laws that were available on WIPO Lex and also versions collected individually from Member States, it would be useful to have full access to that data, as it would save time in future research on that topic.

93. Professor Seng responded to that set of questions, and his response would be found at the webcasting link of WIPO: (Thursday, November 17, 2016 Morning Session)
<http://www.wipo.int/webcasting/en/?event=SCCR/33#demand>

94. The Vice-Chair stated that it was time to conclude the presentation, and that any Member States that wished to clarify and correct the study, needed to send comments through the Secretariat.

95. The Delegation of Brazil thanked WIPO and in particular, Professor Seng for what had clearly been a labor of love. The Delegation stated that although the study was a work in progress, based on the section on its country, it was very confident in the comprehensiveness and the accuracy of the report. The Delegation stated that the report would provide it with much food for thought in its ongoing internal debates about copyright law reform and also as it engaged in trade negotiations, which contained an IP chapter. The Delegation asked Professor Seng to not stop, as it was looking forward an even longer version of that report in the not so distant future.

96. The Representative of the International Video Federation (IVF) thanked Professor Seng for his very comprehensive, interesting and useful study. The Representative asked Professor Seng if it were possible, and not too cumbersome, to make a distinction between the countries that were members to the WCT and the WPPT. The Representative stated that it was asking that question because there was a lot of attention and exceptions in the digital environment, and it could be interesting for further discussion to have an analysis.

97. Professor Seng stated that as he already had worked on some preliminary data on that already, he would be happy provide that analysis.

98. The Vice-Chair closed the presentation and stated that the study carried out by Professor Seng was going to be very useful for all the work and all the negotiations that were going to be carried out within WIPO, and specifically within the SCCR. The Chair thanked Professor Seng for his presence.

99. The Vice-Chair invited the regional groups to make initial statements regarding Agenda Item 7, limitations and exceptions for educational and research institutions and for persons with other disabilities.

100. The Delegation of Nigeria, speaking on behalf of the Africa Group stated that it looked forward to holding constructive and result-oriented discussions on the current limitations and exceptions of the SCCR. The Delegation stated that as it had expressed in its opening statement, it believed it was simply time to determine a functional path forward, for the Committee's work in that area. The Delegation strongly believed that the absence of a clear result-oriented time frame for the Committee's discussion of the limitations and exceptions agenda was more harmful than helpful to the work program of the SCCR and the overall objective of the exercise. The Delegation supported the Chair's idea of holding regional meetings to facilitate understanding of the Committee's work. The Delegation stated that at the crux of the SCCR discussion on limitations and exceptions was the need to facilitate access to knowledge, information, and lifelong learning opportunities for anybody, wherever they were as illustrated in SDG 4, a promise made to the world's peoples by all Member States of the United Nations. The Delegation stated that all educational institutions remained central to the learning, creation, innovation and discovery processes, of life norms. The copyright system enabled the stakeholders to strike a beneficial balance between right holders and the public interest. That was in fulfillment of the copyright foundation of rewarding creativity and the public good. The Africa Group had struggled to fully separate the discussion on limitations and exceptions and libraries and that of limitations and exceptions for educational and research institutions. There was very little that separated both subjects, as they were both aimed at promoting knowledge and facilitating access to information for human and societal growth and advancement. As was proposed by the Africa Group in 2012, the Committee should consider holding discussions of both subjects in tandem. Given that most of the 11 principles identified for limitations and exceptions for libraries and archives, would apply for limitations and exceptions for educational and research institutions and for persons with other disabilities other than print, such a direction had the chance of serving a good practice. The Delegation stated that pending SCCR consideration of that idea, it would request that the Committee continued that discussion on limitations and exceptions in line with the 2012 General Assembly mandate with a view to determine the most functional inclusive and mutually acceptable way forward. The 2012 mandate envisaged a number of outcomes but did not prejudge the outcome. The Delegation believed that the array of related documents at the Committee's disposal, including studies and other materials, would immensely assist its work in determining how to proceed. Holding only exchange of information on national practices would not suffice. As the Committee deliberated on exceptions and limitations for educational and research institutions, the Africa Group looked forward to positively contributing to the discussion on the Chair's expected chart for educational exceptions. The Delegation stated that it welcomed the presentation by Professor Seng and comprehensive presentation on his updated study that included all 189 Member States of WIPO.

101. The Delegation of Chile speaking on behalf of GRULAC thanked WIPO for the Open Access Policy, in particular, the use of Creative Commons Licenses for content generated in the future in the framework of WIPO. The Delegation stated that the issue of exceptions and limitations, which the Marrakesh Treaty stands as one of its important results, has been promoted by GRULAC since its beginning. Regarding limitations and exceptions for educational and research institutions, GRULAC stated that it would like to commend the presentation and study by Professor Seng on the copyright limitations and exceptions of educational activities. The Delegation thanked Professor Seng for going through the copyright legislations of the 189 members of WIPO. The Delegation stated that it had in the beginning observed a clear cut interest and commitment to support educational objectives, with the protection of authors and performers in its creative works. GRULAC considered that it might be interesting, based on statements, to study the effect on the exceptions and limitations. The conclusions of the study were a contribution to the challenges that the Committee was facing in its discussions. The Delegation stated that it looked forward to the preliminary presentation by Professor Reid and to other proposals that would move the discussion on that matter forward.

102. The Delegation of Latvia, speaking on behalf of CEBS, thanked Professor Seng for the educational research analysis, which covered all Member States. The Delegation stated that it recognized the crucial role played by educational research institutions in the development of the society. The Delegation considered the discussions on the national implementation of the international legal framework on copyright, as the main focus of the work under that agenda item. The Delegation stated that it was expecting to hear more evidence-based approaches on the different ways to integrate the national needs in the legal framework and in that regard, it believed that more useful discussions on licensing might be of interest to all Member States. The Delegation stated that it was looking forward to Professor Reid's presentation on the study of limitations and exceptions for persons with other disabilities than visual impairment. The Delegation expressed that given the exchanges that had taken place, and the studies that had been presented to the Committee, a legally binding instrument would not be an appropriate outcome of the work of that Committee under that agenda item. The Delegation believed that under that agenda item, the Committee could work on providing guidance to the Member States on the implementation of international legal instruments.

103. The Delegation of Turkey, speaking on behalf of Group B, stated that it would like to highlight the objectives and the principles as proposed by the Delegation of the United States of America in the document SCCR/26/7, on the topic of the limitation and the exceptions for the educational and research institutions. The Delegation believed that that document could compliment such work on the limitation and exceptions for education and research institutions. Regarding the study by Professor Reid on persons with other disabilities, the Delegation stated that it looked forward to his presentation and that it would like to have an update at the earliest opportunity. As there was a lack of consensus, in finding a basis on which to proceed forward, the same consideration as with the previous item should be taken into account. The Delegation stated that the discussions in the Committee should focus on understanding better the issue. The Delegation took note of the proposal by the Delegation of Argentina on the limitations and exceptions for education and research institutions, and for persons with other disabilities. Since the proposal was submitted shortly before that Committee meeting, the Delegation looked forward to the discussions of the proposal at the following sessions of the SCCR.

104. The Delegation of the European Union and its Member States stated that it welcomed discussions on how the existing international framework would support educational and research institutions and people with disabilities both in the analog and the digital worlds. The Delegation believed that for that agenda item, the objective should be to provide guidance to WIPO Member States on how to adopt and implement meaningful limitations and exceptions on the national level in the areas within the current international legal framework. In that regard, the Delegation welcomed the presentation by Professor Seng on exceptions and limitations for

education and research, and it equally looked forward to hearing about the scoping study on limitations and exceptions for persons with disabilities other than print disabilities by Professor Reid. The Delegation reiterated that it was important that WIPO Member States maintained a certain degree of flexibility, which was very relevant in view of the different legal system across WIPO's membership. In many Member States, licensing played an important role, at times alongside the application of exceptions. The Delegation did not think that working towards a legally binding instrument was appropriate. It believed that discussions on the basis of the chart that the Chair proposed, would be most useful if they focused on the exchange of best practices, with the view to find efficient solutions that arrested any specific issues, for example via national limitations and exceptions or licensing under the current international treaties. The Delegation took note of the proposal by the Delegation of Argentina concerning limitations and exceptions for libraries and archives and exceptions for education and research institution and for persons with disabilities. As the proposal arrived very late, the Delegation stated that it needed more time to better understand it. The Delegation reemphasized its view that the work undertaken by that Committee could have a meaningful outcome, only if the Committee shared the same understanding of the starting point and the objectives of that exercise.

105. The Delegation of China thanked the Secretariat and Professor Seng for the deep and wide study. The Delegation hoped that through joint efforts, there would be relevant discussion on copyright, in terms of education and research institutions. The Delegation expressed that it paid great attention to the fair use of copyright and as such had relevant regulations on exceptions and limitations for education and on persons of other disabilities.

106. The Delegation of India, speaking on behalf the Asia Pacific group, thanked Professor Seng for his study. The Delegation expressed that exceptions and limitations were essential requisites for all norm setting exercises and understandings in national and international forum. Those provisions were vital for achieving the desired balance between the interests of right holders and public welfare in scientific, cultural and social progress, especially in developing and least developed countries. The need to maintain a balance between the rights of authors and the larger public interest, particularly in education, research, and access to information, was clearly reflected in Article 7 of TRIPS. Mostly operating on a noncommercial basis, libraries and archives were two vital institutions of society and in most developing and least developing countries, they were often the predominant, if not the only, source of material for students and academics. In fact, people in all countries, irrespective of their level of development, benefited from exceptions and limitations for libraries and archives. The agreement on limitations and exceptions for libraries and archives would allow those benefits to be experienced by all humankind, instead of restricting them to individual countries. Such an agreement would require uniformity and balance at the national level, including the harmonization of domestic laws, and policies, which would also contribute to safeguarding and promoting the legitimate interests of all stakeholders. The Delegation supported the sharing national experiences of Member States which it believed was beneficial for all. The Delegation reiterated its previous proposal for appointing a facilitator or friends of Chair, like other WIPO Committees, who could take that process forward in an intensive and focused manner. The Delegation requested and urged all Member States to seriously consider its proposal.

107. The Delegation of the Russian Federation stated that while the research that was presented in the Committee presented the importance and the necessity of the work on limitations and exceptions, the Delegation wished to bring to the consideration of the Committee, something that would accelerate its work and that would unite two issues: limitations and exceptions for libraries and archives and limitations and exceptions for educational and research institutions. The Delegation stated that in principle, that was one issue, moving in one direction, and that it could be developed as a single document. The Delegation stated that the Committee was not paying enough attention to informal meetings and as such did not produce the results that it wanted. The Delegation suggested that at following session of the Committee, a small working group be created so as to enable Member States to

look at the documents from the Committee. The Delegation stated that that would considerably promote the solution of those issues, which stood before the Committee.

108. The Delegation of Iran (Islamic Republic of) stated that it welcomed the Open Access Policy of WIPO. The Delegation was confident that that initiative would be a turning point in the dissemination of the knowledge of IP-related matters and could play an important role in strengthening respect for IP. The Delegation stated that the intended purpose of copyright was to advance cultures, science, and education. A key to proper functioning of the copyright system was achieved on the one hand by providing private incentives for the carrying out of work and on the other hand, promoting access to work. In that regard, the Delegation reiterated the need to maintain a balance between the rights of authors and the large public interests, particularly education, research, and access to information. The General Assembly had given the mandate to SCCR in 2012 to work towards an appropriate international legal instrument or instruments on the topic of limitations and exceptions. Accordingly, it was highly expected from the Committee and the Member States to substantively and constructively engage in the discussion to advance the work in accordance with that mandate. The Delegation stated that it supported current initiatives to draft an appropriately legally binding instrument on limitations and exceptions for educational and research institutions and persons with disabilities at international level, as those institutions were important in providing people with access to information and culture. Such a legally binding instrument would make it possible to meet the needs of all Member States in terms of the legislative work.

109. The Delegation of India stated that limitations and exceptions for educational institutions and for persons with other disabilities were of crucial importance in an increasingly bottomless world. The Delegation stated that the way out was to set up an international framework that would shape the Member State local legislations. Further differences in national legislations were bound to block the flow of knowledge, exchange, and to overcome that, required an international framework. The Delegation stated that the world was caught up with issues of the have and have not, the knows and knows not, which were yet to be resolved but needed to be addressed. The Delegation stated that the legitimacy of copyright among the public was squarely dependent on the rightful access to the public at large. The Delegation urged the Member States to work towards that goal.

110. The Delegation of Indonesia stated that it aligned itself with the statement, on the limitations and exceptions for educational and research institutions and for persons with other disabilities, delivered by the Delegation of India on behalf of the Asian Pacific group. The Delegation stated that the copyright systems should be balanced, taking into account commercial interest in copyright and right holders and also the public interests in scientific, culture and social progress. The Delegation stated that the SCCR should continue to substantively discuss the limitations and exceptions for educational and research institutions and for persons with other disabilities that would result in normative, that was embedded in an effective international legal system that facilitated the lawful exercise of limitations and exceptions.

111. The Delegation of South Africa expressed its appreciation to the Secretariat and to Professor Seng for his comprehensive study on limitations and exceptions for education. The Delegation aligned itself with the statement made by the Delegation of Nigeria, on behalf of the Africa Group and wished to make reference to SDG 4. The Delegation stated that in order to fulfill that promise, the role of education and research institutions had to become imperative, and that the members of the Committee had to create a conducive environment to facilitate access for educational and research institutions and for persons with other disabilities. The Delegation expressed that if the Committee channeled energy into the work of that agenda item, WIPO could make a meaningful contribution to the global development agenda. In order to take concrete steps, the Committee needed to identify and bridge existing gaps between national and international spheres, especially those which could only be addressed through an

internationally binding legal instrument. The Delegation stated that Professor Seng's study provided valuable data, that could assist the Committee in that goal. The Delegation expressed that within the African context, there was distance learning, which came about as a result of the rapid diffusion of technology, and which necessitated the creation of an adequate framework that took into account the erosion of physical and geographical boundaries. In that regard, the Delegation of South Africa's work in the Committee was focused and structured on the vast data gathered in Professor Seng's study, which could bring the Committee one step closer to a conclusive and mutually agreeable outcome that had practical application.

112. The Delegation of Nigeria aligned itself with the statement made by itself, on behalf of the Africa Group. The Delegation stated that the development of society could not be over emphasized, therefore, any framework that would enhance the efficient functioning of educational activities, to serve the purpose of building knowledge and socioeconomic needs, deserved balanced consideration. The Delegation expressed that that was pertinent in view of WIPO's efforts to draw linkages between its activities and the SDGs. The Delegation expressed its disappointment that that agenda item had not enjoyed sufficient allocation of time and tools, to enable any meaningful progress to be made. The Delegation hoped that that trend would be reversed with the provision of the Chair's chart as a tool to facilitate discussion on educational exceptions, including the eight categories identified by Professor Seng's study and the working document SCCR/26/4 Prov., amongst others. The Delegation stated that it welcomed Professor Seng's updated study, which covered the educational limitations provisions in 189 Member States of WIPO. The study was very instructive and rightly demonstrated the diverse practices in Member States, in terms of making provisions for limitations and exceptions. The study reechoed the need for a global standard, that would create an informative approach, as educational activities became increasingly transnational in the context of digital delivery platforms. To develop a deeper understanding and identify solutions. The Delegation hoped that the Committee would consider the proposal for regional workshops on that agenda item to develop a deeper understanding and identify solutions.

113. The Delegation of Argentina wished to thank the Delegation of Chile for its declaration on behalf of GRULAC. The Delegation stated that preceding the meeting, it had put forward a document that introduced a new element into the discussion on just education, libraries and archives and persons with other disabilities. The Delegation expressed that that was rather new in the discussions, as in the general system of intellectual property at the international level, the only principle of international law, was the principle of territorial reality, which was applied universally and so the protection also applied in the country where that protection was sought. There were certain types of legal relationships that were implied in that, particularly, if there was an assessment on whether a certain type of behavior was an infringement. In principle, each country had its own system, which functioned in accordance to its own national conditions, and as demonstrated by Professor Seng, which were also applied to exceptions that permitted a wide range of alternatives. The Delegation suggested bringing an attempt to demonstrate that for the international validity of exceptions and limitations, it was possible to have a principle in the country of origin or the place of production, whose validity had an effect of validity in other countries. The Delegation explained that if the Committee did not abide by similar principles, then there would be a range of exceptions as was evidenced in the study carried out by Professor Seng. The Delegation suggested that the Committee reach absolute uniformity in the context of exceptions, so that libraries could render to each other without fear of being considered infringement. The Delegation explained that that was the combination of the principle of territoriality, the three-step test and the principle of harmonization. The Delegation stated that a single right in terms of the validity of exceptions, required an in depth additional study. The Delegation expressed that its document was simply an introductory proposal to kick off the discussion regarding that issue. The Delegation suggested that using the table that was under discussion, and as well as Professor Seng's findings, the Committee consider a minimum system of exceptions and limitations. For example, if a library was asked from another library for a copy of a book that was no longer in print in another country, it could take a minimum

option, by requiring an editorial seal where the work is still being sold or in a used book market. That would require combining the rule of harmonization and the rule of uniformity, which the Delegation reiterated that it was proposing. The Delegation stated that that process could be assisted by the harmonization rule, which was a system that required further study and one which must be accompanied with other existing proposals. The Delegation stated that using exclusively the principle of territoriality could be deficient, whatever instrument or instruments they would use.

114. The Delegation of Chile stated that the issue of exceptions and limitations was a topic of importance for its country, and that it considered teaching and research institutes as essential, as well as the people with other disabilities. The Delegation thanked the Secretariat and Professor Seng for the study. On the section in the study referencing to Chile, the Delegation commended the corrections that were made in reference to its legislation, which it had discussed in the previous session. The Delegation stated that the study, which discussed the global reality, would be greatly useful in the Committee discussions. The Delegation expressed that the limitations and exceptions proposed by Professor Seng would facilitate the analysis of that topic. The Delegation stated that it was stricken by the very low quantity of Member States who had limitations and exceptions especially aiming at remote or online education as well as TPMs. The Delegation stated that that in some way demonstrated the challenges ahead in the digital environment, and the reflections that needed to be made to update legislation.

115. The Delegation of Guatemala endorsed the statement made by the Delegation of Chile, speaking on behalf of GRULAC. The Delegation commended on the study carried out by Professor Seng which it believed was important in the unification of the information on provisions of educational entities, libraries and archives.

116. The Delegation of Brazil stated that it was pleased that the SCCR was engaging earnestly in the discussion of exceptions and limitations. Three years after the conclusion of negotiations on the Marrakesh Treaty, the Delegation believed the Committee was ready to stand unified for libraries, museums, research and educational institutions, as well as for persons with disabilities. The Delegation stated that GRULAC, under the able coordination of the Delegation of Chile, had been discussing those issues intensely. The Delegation was glad that they seemed to be mobilizing many other Member States. The Delegation stated that it was convinced that a healthy copyright system, with well considered limitations and exceptions provided more effective and sustainable protection to rights holders. That system also encouraged the progress of science and of the useful arts. The Delegation stated that in Brazil and in many other countries, students wishing to pursue their education often fought an uphill battle, high tuition costs, less than ideal access to the Internet, insufficient and poorly stocked libraries, even the high prices of academic books, not all of which were available in Portuguese. In that regard, the Delegation was ready to contribute to the discussions at the SCCR, with a view to achieving consensus on the new legal instrument or instruments that would ensure every country had the necessary backing to establish a balanced and effective national copyright system, which took full account of economic and social needs, while respecting the legitimate rights of copyright holders. The Delegation believed that those were far from contradictory and that they were mutually reinforcing as people respected a fair system. Another very important point was on the need for a much higher degree of international uniformity, to enable libraries and archives, museums and research institutions, in different countries, to fully cooperate with one another without fear of liability, for the benefit of users worldwide. That point was, among others, stressed the proposal by the Delegation of Argentina. The Delegation stated that it was engaging in those discussions in good faith, that their outcome would lead to a change in its own national legislation.

117. The Delegation of Mexico stated that education was one of the most important factors involved in development and in the progress of people, societies and countries as a whole. Education had become extremely important because of the scientific and technical changes,

which were moving so swiftly, and which the world was experiencing at that time. From an economic point of view, education was considered as one of the most relevant elements involved in production, and from a social point of view, it was the basis for the eradication of inequalities, poverty, illiteracy, and from a human point of view, education was a basic human right. Research was aimed at the acquisition of new and better knowledge in various areas, such as health, art, literature, which in turn generated numerous results and outcomes in society as a whole. For that reason, the Delegation stated that the government of Mexico welcomed the limitations and the exceptions for educational and research institutions and for persons with other disabilities. The Delegation believed that exceptions to copyright for educational purposes would go to support informational material, traditional educational systems and remote learning system. The Delegation believed that a way of supporting education, and encouraging scientific research of a quality level in any country, was through the improvement of access to the works that were copyrighted. The Delegation stated that it had, in its country legislation, included provisions on limitations and exceptions for educational and research institutions. In that context, the Delegation supported the topic of limitations and exceptions for the educational and research institutions and for persons with other disabilities.

118. The Chair stated that several sessions ago, it had prepared a chart for the topic, exceptions and limitations for libraries and archives, on which were a list of suggested main topics to be discussed, in an orderly and structured manner. The Chair stated that for the topic of exceptions and limitations for educational and research institutions, it intended to do the same thing and had prepared, with the support of the Secretariat, a chart regarding the limitations and exceptions for educational and research institutions. The Chair clarified that the chart, at that point, did not include the limitations and exceptions related to persons with other disabilities, due to the premature stage of that discussion, and that it was that afternoon, that the Committee would for the first time hear a scoping study on that issue. The Chair clarified that the intention of the chart is clarified in the chapeau, in a paragraph, which was in the same line as the paragraph introduced in the chart of exceptions and limitations of libraries and archives. The Chair explained that the chart was designed to serve as a useful tool in providing structure, in the substantive discussion of each topic, drawing on the many resources before the Committee. The Chair stated that the chart would allow the Committee to have an evidence based discussion that was respectful of different viewpoints, without guiding the discussion toward any particular or undesired outcome but to lead to a better understanding of the topics. The Chair explained that the chart had several columns including a column on the number of the topic, a column on the title of the topic, and two additional columns that were related to document SCCR/33/6. The first of those two columns was the executive summary on the study on limitations and exceptions for educational activities and the second of those two columns contained the concluding observations, as was highlighted in document SCCR/33/6 pages 49 to 51 of the document. On the list of topics, the Chair explained that, just as some delegations had requested, the eight topics selected by Professor Seng for his study were the basis of the list in the chart. Those topics contained in Professor Seng's study were the private/personal use, quotations, educational reproduction, educational publications, anthologies, compilations and composite works, school performances, educational broadcasts, communications and recordings. The seventh topic would be compulsory licenses for educational reproductions and translations and the eighth one would be the TPM/RMI exceptions for educational purposes. The Chair stated those were the topics contained in Professor Seng's study, and that as other delegations were of the view that the Committee should take into account document SCCR/26/4 Prov., which contained other topics or elements, to see if it were possible to pick from some of the topics listed in that document, that is what the Chair had done. As such, the Chair had selected from that document, additional topics for the chart, including, orphan works, contracts, importation and exportation or cross border issues, and limitation of liability for educational institutions. As the last four topics were not part of Professor Seng's study, the Chair stated that it wanted to explain why it chose those topics by reviewing the structure of document, SCCR/26/4 Prov. The document started with the preamble and the section "general applicable considerations", which the Chair stated, did not make sense to be in the list of substantial topics

to be discussed. Section number 4 of that document contained "Uses", and on the uses, the Chair stated that it was probably more focused on the topics that it wanted to select. However, the first use had the title "educational, teaching and research institutions", and the Chair stated that it did not select that topic, because educational teaching and research institutions were a cross cutting element of all the topics selected in Professor Seng's study. Therefore, there was no point including it as one topic to be discussed, as it would be discussed in each of the remaining topics. The Chair explained that it would join its comments for section 4.2 with its comments for section 4.3, as they were self-explanatory inside and outside classroom exceptions. The Chair stated that those were the places where an exception could work, and as such, that was a sort of condition applicable to some exceptions. The Chair stated that Professor Seng's study focused on the exceptions corresponding to exclusive rights, which were clearer, and included an exception for reproduction, an exception for public performance, the applicable condition of which included inside the classroom or outside the classroom. The Chair stated that it did not select those for the study. On section 4.4 "availability on an interactive basis and communication to the public for educational purposes", the Chair stated that it considered it already included in Professor Seng's list, as that availability could imply part of reproduction or educational broadcasts, communications and recordings. On section 4.5, "anthologies and chrestomathies", the Chair stated that anthologies was one of the specific topics selected by Professor Seng's study, which was listed under topic number 4, educational publications, anthologies, compilations and public works. On section 4.6 "distance learning", the Chair stated that in the presentation by the Professor Seng, he had an explanation of the situation of distance learning, which was partially involved in the discussion for educational broadcast communications, and recordings. The Chair stated that the Committee would use the comments regarding that important issue of distance learning. On section 4.7 "research", the Chair stated that the term "research," was one of the main goals of the terms used for that agenda item. The Chair stated that the term research was a cross cut topic that would be mentioned in each and every topic proposed in the chart list, so it did not add research as one specific topic, as it would be mentioned in the remaining list in the document. The Chair stated that the section 4.8 "reverse engineering" was something related specifically to the uses of software, and in that regard, since there was no specific peculiarity of the type of work, it might involve reference to that when necessary and did not include it as a topic. The Chair stated that on section 5 "persons with other disabilities", it was still not part of the topics because the Committee had yet to hear the scoping study. The Chair stated that section 6 was "general comments on topics 1 and 2". The Chair clarified that as those general comments were related to specific topics, they did not deserve to be selected as topics themselves. The Chair stated that section 7 included "broader topics with implications for education", and were not strictly exceptions for educational purposes. The Chair stated that those were topics to be considered when the Committee engaged in such discussion and the first option was just to take them into account, but not necessarily to put them on the list. Section 7.1 "technology" was neither technology, nor an exception, but was a matter to be discussed when the Committee engaged in that structured discussion. The Chair explained that section 7.2 was "orphan works and withdrawn or out of print works", and that it had selected that topic because it did the same in the structured chart of exceptions and limitations for libraries and archives. And since it was still in the chart that had not been discussed on the chart for libraries and archives, and was listed in document SCCR/26/4 Prov. as a topic to be discussed, the Chair had selected it as topic number 9. The Chair stated that on the topic "public domain" in section 7.3, which did not have paragraphs contained therein, and was something that did not require an exception because it was a public domain, the Committee would go back to it in the discussions of the topics that required exceptions at the national level. The Chair stated that section 7.4 was "contracts" and that it was given the same treatment as exceptions and limitations for libraries and archives, which was included under the topic contracts, and would be discussed in the chart. The Chair stated that the topic "ISP liability" in section 7.5 was a very important topic that was a part of exceptions and limitations for educational purposes. The Chair stated that that was something the Committee could take into account, but was not something that was closely related to the list. In section 7.6 was the topic "importation and exportation", which was part of the list

mentioned as well as part of the chart for exceptions and limitations. Section 7.7 dealt with “public health or security”, which were tremendously important issues. The Chair stated that whatever input came from the Committee’s concern with public health or security, could be shared when the Committee discussed the topics closely related to exceptions and limitations for educational purposes. The Chair stated that the annex contained comments made on generally applicable arrangements. In light of that explanation, the Chair stated that it would go back to its proposed chart for that topic, which contained the eight topics by Professor Seng and four topics selected from the previous documents related to that material. The Chair stated that that was the case in the similar chart for exceptions and limitations for libraries and archives. The Chair expressed that that list was just a proposal, that it was the Chair’s proposal and could be modified. The Chair reiterated that the chart was there to offer the Committee a structured discussion to be followed.

119. The Chair opened the floor for comments.

120. The Delegation of Nigeria, speaking on behalf of the Africa Group, thanked the Chair for the preparation of the Chair's chart. The Delegation believed that the document sufficiently covered the wide range of exceptions that the Africa Group would be interested in discussing in that Committee. The Delegation stated that it looked forward to the Chair's chart being the basis for immediate future discussion on exceptions and limitations for education and research institutions. The Delegation stated that in terms of the level of maturity and the need to further discuss on exceptions for persons with disabilities other than print, it could perhaps see why the Chair had excluded that topic. In terms of educational and research institutions however, the Delegation believed that the Chart was sufficient to proceed future discussions. The Delegation stated that as it was just receiving the chart, it would not have substantive discussions to make on it. The Delegation expressed that it liked the principles that were captured by Professor Seng and SCCR/26/4 Prov., and that it looked forward to further discussions on that.

121. The Delegation of Mexico thanked the Chair for making available the chart. The Delegation believed that the chart was very useful, because it gave the Committee an idea of all the topics involved. The Delegation called on all the delegations to study the chart because based on the way that the Chair had presented it, it was easy to understand. The Delegation expressed that it had a few questions about topics 9 and 10. The Delegation asked the Chair what its reasons were for including the topics of orphaned works and contracts.

122. The Chair stated that as that was part of the initial proposal, it did not mean that the Chair personally agreed with one specific topic that should be part of the list. The Chair expressed that even as the Chair's chart, the chart tried to reflect what was suggested from the delegations in previous documents. The Chair stated that if after discussions, there was a consensus that contracts was not a matter, it would be removed, as the chart is reflective of the discussions. In terms of orphaned works, the Chair stated that it was similarly an important topic, but it might be the case that after the discussion, orphaned works should be a part, or separately treated as another item from the chart. The Chair expressed that it tried to reflect what was submitted.

123. The Delegation of the European Union and its Member States wished to repeat what it had already shared in its opening statement. The Delegation thanked the Chair for the preparation of the chart, which it believed that the discussions on the basis of the chart would most useful if they were focused on the exchange of best practices, with the goal to find efficient solutions whether by national limitations and exceptions or licensing under the current international treaties.

124. The Delegation of Turkey thanked the Chair for the chart and Professor Seng for the study. The Delegation stated that it was ready to discuss the chart, however, since it had just received it, it would analyze it carefully and then come back with comments. The Delegation expressed that it would be better to discuss the chart on the basis of national experiences.

125. The Chair reminded the Committee that it had engaged in a discussion using a similar chart on exceptions and limitations for libraries and archives. The Chair expressed that there would be grounds to share what each delegation wanted to share in the discussion of each topic.

126. The Delegation of Chile thanked the Chair for its presentation, based on the lengthy study by Professor Seng. The Delegation stated that as it had just received the chart, it had not yet had an opportunity to make a substantive study of it. The Delegation stated since the chart included additional topics that had not been covered by Professor Seng's study, it would imagine that the title of the chart might change to reflect the topics that were not considered by the study. The Delegation was happy to have a basis for continuing discussion.

127. The Delegation of South Africa thanked the Chair for the chart which it believed would be a useful tool. The Delegation stated that it was glad to see that the chart was building on data gathered Professor Seng's study. The Delegation supported the Chart as the basis for future discussion.

128. The Chair stated that it wished to recall some of the specific suggestions to cover some of the topics that were contained only in Professor Seng's study. The Chair stated that the chart deserved further consideration that was reflective of the same efforts given to the framework for libraries and archives. The Chair stated that on the chart for libraries and archives, first the Chair presented or submitted a chart, and then there was discussion on list of topics, and finally, the Chair was given the opportunity to update that list, based on the discussion, and thereafter, the Committee entered into structured discussions, topic by topic. And the discussion of each topic, there was an opportunity for the Chair to somehow summarize that discussion. The Chair stated that the chart was reflective of the submitted suggestions related to the chapeau paragraph of the previous charts. The Chair stated that it was just making a reproduction of that chapeau which had the delegations as the co-authors. The Chair invited the delegations to submit their comments on the list, then to engage in the discussion topic by topic, which it stated would be rich and filled by different opinions and views that would give a concrete idea of each one of those topics. The Chair stated that perhaps at the end, not all of the topics would remain. Some of the topics would be removed after conclusions or interesting opinions, and moving forward with that substantial discussion would enable NGOs to be prepared, topic by topic.

AGENDA ITEM 6: LIMITATIONS AND EXCEPTIONS FOR LIBRARIES AND ARCHIVES

129. The Chair announced that for reasons of clarity, it did not close Agenda Item 7 related to limitations and exceptions for educational and research institutions and persons with other disabilities. The Chair stated that it had started with that agenda item because of Professor Seng's presentation and that NGOs who wished to share a statement on the topic of exceptions and limitations for educational and research institutions and for persons with other disabilities, could share their statements the following day.

130. The Chair opened the floor for general statements regarding exceptions and limitations for libraries and archives.

131. The Delegation of Nigeria, speaking on behalf of the Africa Group, stated that it would like to start off by referencing its earlier general opening statement on exceptions and limitations. The Delegation stated that that statement clearly expressed the view of the Africa Group on the SCCR's discussion related to exceptions and limitations for educational institutions, including libraries and archives. That statement also underscored the central role of such institutions in the learning, creative, innovative and discovery process in life, and how the copyright system afforded a balance between the interests of rights holders and public interests. The Delegation

stated that on the issue of libraries and archives, the SCCR had had the opportunity to listen to practitioners share their practical experiences on the difficulties encountered, in the effort to fulfill their foundational role, of facilitating learning opportunities for all. Those practitioners had also shared how those difficulties were due to impediments in the copyright system. It was for such reasons that the international IP, intellectual property, system, allowed for exceptions and limitations to enable the system to serve all stakeholders. The Delegation stated that it looked forward to engaging in the four remaining topics contained in the Chair's chart and noted that those last topics identified were part of the last topics identified as needful exceptions to copyright laws, to enable libraries and archives to fulfill their role of facilitating knowledge that built peoples and societies. The Delegation expressed that at the end of that discussion, the Committee would need to hold frank and purposeful discussions on what would happen next. The outcome of the SCCR's discussion had to be more than an exchange of ideas on national experiences. It certainly would not assist libraries and archives to disseminate knowledge and lifelong learning opportunities for all wherever they were as envisaged by SDG 4. The Delegation urged the stakeholders and members to work together to support equal opportunities for everyone. The Delegation stated that it looked forward to discussing document SCCR/29/7 tabled by the Africa Group, and the Delegations of Brazil, Ecuador, India and Uruguay as well as any new ideas that on exceptions and limitations for libraries and archives. The Delegation took note of the proposal made by the Delegation of Argentina and stated that it would continue to engage constructively and looked forward to a successful outcome of that discussion.

132. The Delegation of Latvia, speaking on behalf of CEBS, stated that it took note of the advancement of the discussions under that agenda item and that it looked forward to the discussions on the remaining topics. The Delegation stated that it acknowledged the crucial role played by libraries and archives, in social and cultural development. The Delegation believed that those evidence based discussions facilitated the fulfillment of the public interest mission by libraries and archives. The exchange of the best practices among different Member States, on the implementation of the international legal framework, demonstrated that national needs could be accommodated, whilst implementing the international copyright framework. The Delegation expressed that those discussions highlighted the alternative approaches adopted by the Member States, in order to elaborate a national legal framework, that integrated the local needs, and that served as example, for other Member States of the Committee. The Delegation expressed that as it had stated in previous SCCR sessions, the Delegation was not in the position to support working on an international legal instrument in that area. The Delegation stated that the different approaches set up by the Member States, the rich exchanges of the best practices, and the studies presented to the Committee during the previous sessions, could direct its work on the guidance of national implementation of international treaties.

133. The Delegation of Chile, speaking on behalf of GRULAC, stated that it supported a frank and open discussion on the exceptions and limitations for libraries and archives. The Delegation stated that the Committee's discussions should offer effective solutions to problems affecting libraries and archives around the world. The Delegation stated that it was very interested in the debates on proposals submitted by the Delegations of Brazil, Ecuador, Uruguay, India and the Africa Group. In order to promote work on that topic, the Delegation stated that it supported further discussions based on the Chair's proposal. The Delegation expressed that it too looked to the discussion on document SCCR/33/4 submitted by the Delegation of Argentina. As a contribution to discussions on exceptions and limitations, the Delegation stated that it wished to present a concrete case demonstrating the importance of the Committee's debates. In its discussion, the Committee had debated four themes on the relationship between librarians, archivists and intellectual property. One of those themes was a limitation on the responsibility of librarians and archivists. That example demonstrated the importance of limitations and exceptions for the dissemination of knowledge, not only for Member States, but also for the United Nations. The Delegation stated that its case example was related to the origin of the United Nations charter. The UN charter of 1945 was one of the

first international treaties to mention in its text the need for equal rights between men and women. Although the inclusion of gender equality was for a long time attributed to diplomats coming from developed countries, an investigation at the University of London revealed that, that contribution was in fact the result of the mobilization of Latin American women in a conference led by Brazilian scientist and diplomat, Berta Lutz. Upon the consultation of the documents from that period, as well as the memoirs written by the few women who had participated in that conference, researchers Elise Dietrichson and Fatima Sator concluded that Latin American diplomats were responsible for including concerns of gender equality in the charter of the United Nations. The Delegation stated that according to the researchers, the explicit inclusion of gender equality in the United Nations, as advocated by the Latin American delegates, initially faced strong opposition from diplomats. Based on the information provided by the researchers on that project, Berta Lutz, with the help of the Delegations of Uruguay, Mexico, Dominican Republic and Australia, and against opposition from the Delegation of the United Kingdom, demanded the inclusion of women's rights in the charter and the creation of an intergovernmental body that would go to promote gender equality. One of the main contributions of such mobilization was in the preamble of the UN Charter, which acknowledges the equal rights between men and women. The Delegation stated that even against opposition coming from colleagues, who argued that the phrase "the human rights of men" was sufficiently inclusive, Berta Lutz ensured that the word "woman" was included in the text. The Delegation stated that that knowledge was only possible because of the digital work of archivists and museologists in Brazil and the United Kingdom. While Berta Lutz's documents were not in the public domain, the museum scientists at the Berta Lutz National Museum took the risk of putting that information on the Internet. The Delegation expressed that Berta Lutz, who died in the 1970s, did not have the opportunity to grant licenses to preserve her memory. However, even though they were working for the benefit of all UN Member States, the museologists and archivists faced legal uncertainty. The Delegation stated that in the case presented, the legal systems of more than one country were at stake as the works, subjects, reproductions, uses and users, were subject to different legal systems. On the one hand, there were no exceptions in some territories that allowed librarians and archivists to carry out that task. And while that could be solved by updating the domestic laws of the States, there was always a risk that the effects of reproductions necessary for the development of research valid in one country, would be invalid in another. Those results were weak from the point of view of the universality of knowledge. Hence, the Delegation stated that an international instrument must achieve a common catalog of exceptions and limitations for the purposes of access to knowledge and culture. That, along with some coordination rules that would allow the acts carried out by a librarian or archivist, in his/her own country, to not be challenged in another jurisdiction. The Delegation stated that it was grateful to the archivists and museologists who faced in the case that it had shared, faced legal uncertainty, to provide input for scientific research. The Delegation hoped that the work of the Committee would reduce problems in the intellectual property system. The Delegation stated that it was also grateful to Berta Lutz, who by her example, reminded everyone that whilst each country was responsible for its national laws, international law was responsible of all men and women in all regions of the world.

134. The Delegation of China thanked the Secretariat for having carried out the work on limitations and exceptions for libraries and archives. The Delegation expressed that libraries and archives were very important for facilitating access to knowledge, and that frank and open discussions on that topic were also very important for achieving a balance between the interests of rightsholders and public interests. The Delegation stated that it was ready to share information and experience in that area.

135. The Delegation of Turkey, speaking on behalf of Group B, stated that it could not agree more with the important role that libraries and archives played in cultural and social development. The Delegation stated that as the studies presented during previous sessions had described, many countries had already established their own limitations and exceptions for libraries and archives, which worked well based on the specific systems in the current

framework. The Delegation stated that the work of that Committee should be shaped in a manner that reflected that reality while complimenting the situation as it was. With regard to the working methods, the Delegation stated that it was ready continue discussions based on the Chair's chart. The Delegation stated that it fully appreciated that the aim of the Committee's discussions was to reach a better understanding of that topic. The Delegation stated that the Committee should not however, turn its yes away from the current situation, which was that no consensus, for the time being, existed between the Committee for a normative work. In finding a consensual basis, upon which all Member States could stand and work together, that should be duly taken into account. The Delegation noted the proposal by the Delegation of Argentina on exceptions for education and research institutions and for persons with other disabilities. The Delegation stated that since the proposal had arrived shortly before that meeting, it looked forward to the discussions of that proposal at the following session of the SCCR. Regarding the limitations and exceptions for the libraries and archives, the Delegation highlighted the objectives and the principles as proposed by the Delegation of the United States of America in the document SCCR26/8 on the topic of limitations and exceptions for libraries and archives. The Delegation believed that the document could compliment the work on limitations and exceptions for libraries and archives. The Delegation stated that it would continue to engage in the discussions on the limitations and exceptions for libraries and archives in a constructive and faithful manner.

136. The Delegation of the European Union and its Member States stated that it would like to reemphasize its belief in the indispensable function of libraries and archives for the dissemination of knowledge, information and culture, and the preservation of history. The Delegation believed that there was merit in discussing how a balanced international copyright framework could enable those institutions to fulfill their public interest and mission and that as a Delegation it was willing to continue to engage constructively in those discussions. The Delegation expressed that as it had stated in previous sessions of that Committee, its favored approach was one where work focused on how exceptions and limitations could function efficiently within the framework of existing international treaties and where WIPO Member States could take responsibility for their own national legal frameworks, supported by an inclusive exchange of experiences and best practices, and when necessary, the assistance of WIPO. The Delegation noted the proposal by the Delegation of Argentina concerning limitations and exceptions for libraries and archives and exceptions for educational and research institutions and for persons with other disabilities. The Delegation stated that because the proposal arrived very late, it needed more time to understand it better. The Delegation believed that the sharing of best practices, and their efficient exchange, would be of optimal benefit for all WIPO Member States. The Delegation stated that like in the past, it believed that a meaningful way forward would be to focus on a thorough and systematic understanding of the problems faced by libraries and archives against their needs, giving full consideration to the solutions provided by innovation and relevant markets and those available under the current international framework. The Delegation stated that it could not support working towards a legally binding instrument, but that a possible outcome of the discussions could be guidance regarding the national implementation of international treaties in that area.

137. The Delegation of Iran (Islamic Republic of) believed that that limitations and exceptions constituted an integral part of copyright law and that they were critically important in creating a balance in the international copyright system, with a view of producing creativity, increasing educational opportunities and promoting inclusion and access to cultural works. The Delegation believed that those matters were as significant to individuals, as they were to the collective development of enlightened societies. Exceptions and limitations had an important role to play in the accomplishment of the right to education and access to knowledge, actualization of which in many countries was hampered due to lack of access to relevant educational and research materials. Those facts constituted the rationale behind the decision of Member States to create a standing agenda item on limitations and exceptions in the SCCR. The Delegation stated that the existing limitations and exceptions envisioned in the current international

copyright treaties, did not sufficiently address merging technology and cultural changes. The Delegation stated that those shortcomings had to be addressed. The Delegation stated that it was of the conviction that pragmatic norm-setting solutions were essential in moving toward a balanced international copyright law for the benefit of rightholders and public policy issues. The Delegation stated that it strongly supported establishing a legally binding international instrument for limitations and exception for libraries and archives, as those institutions were important in providing people with access to information. The objective of that instrument was to strengthen the capacity of libraries and archives, to provide access to and enable preservation of library and archival materials, to carry out their public service role. The Delegation expected the Committee to make progress on the text-based negotiations, according to the mandate given to the Committee by the General Assembly in 2012.

138. The Delegation of Nigeria aligned itself with the statement it made on behalf of the Africa Group, with respect to that agenda item. The Delegation stated that the subject matter of limitations and exceptions for libraries and archives was very important to the delegation. The Delegation believed that the adoption of a binding instrument at the multilateral level had great potential for global access to information and knowledge. As discussions on that subject in previous sessions of that Committee had already indicated, there were indeed critical issues that needed to be addressed at the global level. The Delegation stated that libraries and archives continue to fulfill their traditional function as facilitators of research, particularly given the emerging challenges of the digital environment and pertinent copyright concerns. There was therefore need for the Committee to focus discussions on finding solutions to those pertinent issues, in a systematic and coordinated approach. The Delegation stated that it had a preference for a text-based discussion on the proposed text of document SCCR/26/3 and document SCCR/29/4, prepared by the Delegations of Brazil, Ecuador, India, Uruguay and the Africa Group. The Delegation supported the call for regional workshops on limitations and exceptions and for such meetings to include limitations and exceptions for education, teaching at research institutions, in order to engender greater understanding. The Delegation stated that it remained committed to engaging with other delegations in advancing the Committee's work on that agenda item in that session.

139. The Chair requested that NGOs give specific statements related to the four topics that were being discussed. The Chair opened the floor to NGO statements.

140. The Representative of SAA stated that what it wished to share was directly related to the topic of limitations. The Representative stated that current technology enabled individuals to have global impact, but the risk of litigation held them back from the digital age. The Representative stated that archives were a mystery to most people and that once people recovered from the shock that archivists were not some sort of gnomes, trolling around in the dark, they ask, "what was the archivists most important document"? The Representative stated that it dreaded that question as everything it had was valuable to somebody somewhere. The Representative expressed that although most archives had a few such valuable treasures, they were not central to their responsibilities; rather, archives existed to preserve everyday letters, reports, photos, computer files, memoirs, and so on. They were not locked away as treasures, instead, they were openly available for research and study. It was those everyday items, such as a soldier's letter home during war time, that collided with copyright's monopoly. As professionals, archivists were committed to protecting everyday people's rights, but the strict adherence to copyright undermined the reason archives had such collections, that is, research access. The Representative stated that as was stated in UNESCO's declaration on archives, "open access to archives enriches our knowledge of human society, promotes democracy, protects citizens' rights and enhances the quality of life." That was why the Committee needed an international legal regime to limit liability for doing what must be done to fulfill the mission that society had assigned to archives. The Representative stated that archivists were not asking for free reign, but assurance that doing their basic work would not expose them to costs of legal fees or penalties, thus exhausting the meager budgets that they had. Without

exceptions, archivists had only two unacceptable options: to abandon concern for copyright, or to be excessively cautious, both of which undermined its mission. The Representative stated that it needed a safe harbor to perform its work in good faith. The Representative stated that such a tool should provide a limit on litigation, freedom from criminal liability, and should limit civil remedies to injunctions. Accounting for both rightsholders and archivists' interests, the Representative stated that such a tool should provide a baseline definition of eligible archives, limit the exception to noncommercial activities and require a basic assessment of the presence of works subject to normal commercial exploitation. The Representative stated that archivists were at a crossroads where they care about copyright, but were also ready to ignore it, if the chance of a lawsuit was slim. The Representative shared an example that if one woke up in the middle of the night and found a bat in his/her bedroom, the chance that he/she had actually been bitten while sleeping would be very small, but the consequences of being wrong on that would be immense; namely, rabies and death. A rabies injection would protect against that scenario. Similarly, limitations on liability for archival work would free archivists from facing risks that block their mission.

141. The Representative of IFLA stated that it wished to address the Committee as a library school dean, educator and frequent speaker to librarians on legal topics. The Representative stated that copyright education was an integral part of the library school curriculum and in-service training. As a result, librarians and archivists strived to be compliant with the law in all aspects, especially copyright law, which resulted in librarians and archivists not being very risk tolerant. The Representative stated that that was compounded by the reality that in many Member States, direct liability in copyright law was a strict liability law. Because of those concerns, librarians and archivists often avoided uses. As with orphan works, that avoidance was not in the public interest. The Representative stated that copyright laws were complex, and as the reports of both Professor Crews and Professor Seng had demonstrated, the law varied in objects, scope and application. Moreover, libraries and archives found themselves dedicating ever more time to legal questions. As mentioned before, librarians and archivists were trained professionals; however, the average librarian or archivist was not a lawyer, and with the exception of those working in the largest institutions, they did not have access to legal counsel for instruction in the intricacies of the copyright law which they often faced on a daily basis. The Representative stated that considering the digitization projects, that preserved and provided access to cultural heritage, as was documented in Professor Crews' report, the majority of countries surveyed did not exclusively permit digital preservation. That could be because the law did not mention preservation in specifics, and allowed only for one or two copies, whereas digital preservation often required greater redundancy, as technologies improved and creators and users migrated to those new technologies. Moreover, many libraries and archives were undertaking digital preservation in response to government mandates, sometimes risking infringement in order to fulfill that mandate. The Representative shared that in one instance, an archivist conducted a diligent search for rightsholders of a collection of letters of soldiers before the Korean War, before deciding to digitize the documents for an online anniversary exhibition. Subsequently, a family member came forward to threaten litigation for unauthorized use. In another example, a librarian provided a copy of an unpublished work to a researcher who subsequently quoted it in a publication. The library was added as a defendant to the initial court complaint filed against the researcher. Additionally, libraries and archives faced challenges regarding secondary liability based on the actions of patrons. Libraries and archives often provided guidance or training concerning permissible uses, posted appropriate copyright notices, and were conscientious about removing or disabling access to materials found infringing, once aware of the infringing nature of their content. However, given the limited resources and the lack of legal expertise, or access to immediate legal counsel, it was impossible to achieve complete compliance and preclude all potential instances of infringement. In order to reduce the uncertainty in determining whether a particular use was infringing or not, librarians and archivists acting within the scope of their duties, and in good legal faith, who had reasonable grounds to believe that they were not committing or contributing to an infringement, should not be held liable for inadvertent transgression. A limitation on liability provided

librarians and archivists valuable legal breathing space in their day-to-day work. Given that librarians and archivists often worked on collaborative works from a variety of geographic origins, an international instrument was necessary. Where second heir was permitted, the Member State should also be released of liability, resulting in the infringing acts of their patrons.

142. The Representative of Electronic Information for Libraries (eIFL.net) stated that limitation on liability was an important provision for information professionals who were every day involved in the practical application of copyright exceptions. The Representative stated that the issue was that librarians strived to comply with the law as they needed to understand and apply the law as part of their daily work. Indeed, they were often the first source of information on copyright for their users, and within their institutions, yet few librarians had the benefit of formal legal training, and most did not have access to specialized legal advice. The Representative gave an example that in a survey of 35 academic and public libraries in Serbia, not a single institution had access to professional legal support. Representative stated that a new resource developed by EIFL, the court libraries checklist, helped librarians determine their domestic law activities. The Representative stated that what it found from its use was a widespread uncertainty around what the law may or may not allow, especially when technology was involved. From the evidence, it was easy to understand why. The WIPO study on limitations and exceptions for libraries and archives revealed a crazy complexity in the application of copyright exceptions across jurisdictions. The conditions included who may copy, what may be copied, with what conditions, and how items may be copied. And as almost no countries had addressed cross-border issues, the cross-boarder transfer of content was before electronic resources were copied in. The Representative stated that even copyright lawyers sometimes found it difficult. The Representative expressed that a limitation on liability would enable librarians acting in good faith, and having reasonable grounds, to believe that they had acted in accordance with the law to take full advantage of the scope and opportunity of exceptions intended by the legislator. The Representative stated that if a librarian or archivist can be held personally liable in the case of an innocent misinterpretation of the law, then the effect on access to knowledge was chilling.

143. The Representative of the German Library Association stated that it was speaking as a lawyer working in one of the biggest research libraries in Germany. Copyright codes were becoming extremely complicated and that was especially true for copyright limitations and exceptions. The Representative gave as an example Article 53 of the German Copyright Code which in discussing making copies for private research and archive copies, was extremely detailed. It had seven paragraphs and filled a whole page and there were several dissertations about only that statute. The Representative asked how a librarian, whose duty was to make copyright protected materials accessible to researchers and to public in their daily work, always know what was legal and what was not. The Representative stated that many times, lawyers themselves could give absolute clear answers. The Representative stated that not every librarian had a lawyer sitting beside them all day and that there were more reasons why library exceptions are extremely difficult to deal with. Germany had exceptions for document delivery, for digitizing and making available works on dedicated terminals, and the reading room, and for making available parts of works for student classes. Those exceptions were fixed in Germany's copyright Code. When libraries began to make use of those exceptions, they were for years confronted with deep and detailed legal discussions and lawsuits up to the European Court of Justice. Additionally, there had been and were still ongoing on negotiations about remunerations and further conditions about the use of the works within the scope of the exceptions. The Representative stated that those were statutes that were already eight years old. In all that time, those exceptions simply did not work properly. As a consequence of all those uncertainties, libraries found themselves in a legal limbo on whether they could make use of the exceptions or not. The Representative stated that they were used, but only on a very low level as if libraries made use of them, they took the risk of being sued. The Representative stated that a limitation of liability would help libraries fulfill their purpose within that uncertain frame of limitations and exceptions. On cross-boarder situations, with respect to all those

uncertainties at the national level, the Representative asked how any librarian could be sure about conditions in other countries if they sent a copy across a border. In Germany, there had been a lawsuit that lasted between 2002 and 2007 because of document delivery. It left the libraries uncertain about sending copies to countries other than Austria and Switzerland. The Representative stated that since then, without licensing in a cross-border situation, if they delivered, they only delivered copies on paper. The Representative stated that limitations of liability on gross negligence or maybe another good measure could be the mutual recognition of national exceptions that could help. That had to however be fixed in international agreements.

144. The Representative of the European Bureau of Library, Information and Documentation Associations (EBLIDA) stated that librarians were governed by professional code of ethics which included respect for copyright law. The Representative stated that IFLA's code of ethics stated that librarians and other information workers realize the intellectual property rights of authors and other creators, which it worked to ensure that their rights were respected. The Representative expressed that libraries, archives and museums were major institutions that wanted to comply with the law, and needed to protect their good names and reputations. Yet, when dealing with copyright law, they had to put themselves on the line for the public interest without sufficient legal protection. The Representative stated that national laws and court rulings led to a sprawling jungle of interpretations within many Member States, only which were able to reach a resolution in the European Union Court of Justice. The Representative expressed that the staff of libraries and museums were not trained lawyers. The majority of those institutions could not even afford to retain lawyers, who would help them sort out the complex requirements of copyright law including individual requests to display works from their collections, or the digitization of means of works. The Representative stated that for libraries and museums, work, knowledge and information were increasingly accessed through licenses that were often operated under foreign jurisdiction, adding further complexity to the legal framework that applied to the work of librarians, in particular. Two examples from the European Union testified to the need to limit liability for librarians, archivists and museum professionals. The Representative stated that the Information Society Directive of 2001 listed 20 optional exceptions, which the Member States of the European Union could pick and mix at will, and implement in 31 different variations, at the national level. The Representative stated that it was impossible for librarians to provide answers to researchers' requests and inquiries into what was allowed in the different countries concerned. The Representative stated that such uncertainty can cause institutions to unnecessarily refuse requests, for fear of exposure to potential claims of copyright infringements. On orphan works, the Representative stated that in the European Union, there was legislation on clearing rights, for potentially orphaned works so that they could be registered and declared officially orphaned. The Representative stated that despite that, the legislation didn't provide full indemnity for European libraries, archives and museums if the grandchildren of owners appeared out of nowhere, claiming copyright infringement. The Representative stated that it was only fair that exceptions for libraries, archives and museums were underpinned by a limitation on liability, with regard to good faith, noncommercial activities of librarians, archivists and museum professionals, so that they could safely carry out their public interest mission, with the knowledge that they were protected from liability for inadvertent or unintended copyright infringement.

145. The Representative of IFJ stated that the world needed ethical journalism. Despite the failings of some newspapers, the work of individual, independent journalists remained the best bulwark against arbitrary power and the gaining of that power through a mixture of falsehood and rumor amplified by the echo chambers of electronic gossip. The Representative stated that its ability to make a living, writing and editing reports on science and technology in London, depended on the strength of authors' copyright laws. The Representative stressed the need for professional authorship and stated that the promise that the Internet era would usher in a golden era of democracy, had proven hollow. The Representative stated that the exchange of prejudices and lies through social media was not true or useful free expression. Citizens of all

countries needed to have the chance to be informed, through the work of individuals who were committed to building the skills and experience that evaluated claims, and unmasked falsehood. The Representative stated that those people, those journalists in particular, needed to have the economic security that enabled them to stand up to power, including, where necessary, that of newspapers and broadcasting owners. The Representative expressed that the fact that the publishing industry has been badly hurt by the Internet revolution, was not well known, because publishers have managed to maintain some influence. The industry has particularly been hurt by Internet corporations that have garnered a fortune, selling advertising alongside other people's creative work. The Representative stated that how to get those corporations to pay for the use of that work, that prime raw material, had been a challenge that was causing head scratching in the European Union. The Representative appealed to the Committee that it should not be swayed by the promise held out by some, that opening up creative work for use without remuneration, offered some kind of golden era of free information. The Representative explained that the risk was that free information ended up being worth every penny. The Representative stated that yes, libraries, archives and educational institutions should have the legal certainty they needed to play their utterly essential part in insuring an informed citizenry. The Representative stated that there ought to be an insistence, throughout the world, that those vital institutions should be adequately funded. The use that libraries made of authors' works should be compensated because as libraries moved online, they formed partnerships with certain Internet corporations, which made their activities appear closer and closer to publishing in some respects, a move that affected the income of authors. The Representative stated there should be an insistence that remuneration should be delivered to authors through collecting societies. The Representative stated that the Committee should commit to encouraging the formation of transparent and democratic collecting societies everywhere. The Representative stated that useful information depended on authors having adequate primary income from individual uses as well as uses by libraries and schools. The Representative expressed that the proposed new European Union directive, securing more transparency in the way authors' works were exploited by their publishers, producers and broadcasters, was a step in the right direction. The Representative stated that the Committee should be inspired by that work on transparency and that it should rededicate itself to enabling "innovation and creativity for the benefit of all." The Representative stated that without the work of skilled authors and performers, libraries had nothing to share, schools had nothing to teach, and that that Committee had nothing to discuss. The Representative stated that the Committee needed to refocus and support creativity.

146. The Representative of the International Council on Archives (ICA) stated that archival institutions had two primary roles, to preserve materials in their care, and to make those materials available for study and research by everyone, no matter what they wished to study or who they were or where they were. The Representative stated that in both roles, archives engaged copyright. The Representative expressed that when an archive served an individual user by supplying a copy of a copyright work, in accordance with any relevant exception permitting such activity, liability for any unlawful use of that had to rest with the user, not the archives. Stated more broadly, where Copyright regimes provided for secondary liability, archives and libraries had to be exempt for liability from the actions of their users. However, archives also engaged copyright when they performed functions that served the broader public interest, to benefit many users or to safeguard the records themselves. The Representative stated that an example of that was when archives made preservation copies of fragile originals or when they massively digitized information to make records available online. In that process, an archive was a user of its own resources, and the professional principles and codes of ethics that undergirded archival work required the archives to take reasonable steps to protect the interests of the rights owners of the works in their collections. The Representative stated that its own doctoral research clearly demonstrated that fear of legal liability had made North American archivists extremely cautious when selecting what was made available online. Those archivists chose only holdings in which they owned the copyright or in which the copyright had expired. Consequently, their online offerings were but a fragment of the archives' rich holdings which may not be what best served users' interests. The Representative stated that the information

service, to which the public was entitled, was greatly diminished; therefore, archives and libraries required limitations on liability for their actions that were subject to certain conditions. The Representative stated that for the application of limited liability, the contravening action had to be for non-commercial purposes and the archives had to be able to demonstrate that it acted in good faith with no reasonable ability to identify or locate the rights holder. The Representative stated that in those circumstances, remedies had to be limited to civil penalties such as an injunction to remove specified material from an online service or to cease the infringing action, so as to limit the amount of damages, based on the actual economic harm suffered by the rights holder. The Representative stated that such a limit on liability would enhance the range of online offerings and would equip archivists to better serve society.

147. The Representative of the Library Copyright Alliance (LCA) stated that in the United States of America, there were two important limitations on damages liability for libraries and archives. Those limitations were important because statutory damages could be so large, up to \$150,000 per work infringed. The Representative stated that a relatively modest mass digitization project involving 10,000 works could lead in theory to 1.5 billion dollars in statutory damages. The Representative expressed that an important limitation in the Copyright Act provided that a court could reduce the statutory damages to zero, where a library or archive or its employee, were acting within the scope of his/her employment, and believed and had reasonable grounds for believing, that his/her use of the copyrighted work was a fair use. The Representative stated that that was a great limitation, but that it unfortunately only applied to the infringement of the reproduction right. Therefore, in a digital environment, the Representative stated that it was not clear how useful that exception was, a notion that implicated the performance or the display right. The Representative stated that the second limitation, which was more general, was the concept of sovereign immunity, under which a public institution can't be sued for damages without its consent. The Representative stated that those two limitations provided libraries and archives in the United States of America with the confidence to engage in digitization projects, particularly of archival material, and special collections. The Representative stated that librarians and archivists in other countries should enjoy similar limitations.

148. The Representative of the Archives and Records Association (ARA) stated that archives record decisions, actions and memories, but without access and consequent research, their value to society was diminished. The Representative stated that archivists had a dual responsibility, on the one hand, to the creators of records to ensure their good management; and on the other hand, to researchers to enable them to carry out their research, which in turn enriches the cumulative knowledge of human society. The Representative stated that archivists were facilitators who worked with both record creators and researchers, to create access for research purposes, which in turn was for the public good. The Representative expressed that in the midst of that wave of responsibilities, was the question of liability and the potential for copyright infringement. There was a requirement for a defined safe space in which archivists could interact with researchers, without undue fear of liability of copyright infringement. That limited liability safe space had to accommodate both the archivist making copies on behalf of a researcher, and the researcher making sales service copies for him or herself, often using a digital camera. The Representative stated that there should be no liability resting with the archivist, as either the provider of copies or of the research space. As long as the archivist could demonstrate that he/she acted in good faith and had no reason to make copies for a purpose that was beyond a legally defined exception, liability for any unlawful use should rest with the end user, the researcher. The Representative expressed that archivists recognized that in return for the existence of limited liability and a safe space, the boundaries of the space needed to be carefully delineated. The Representative state that out of that safe space were going to be actions that an archive carried out on behalf of more than one user, for instance, a mass digitization project. The Representative stated that beyond the scope of such a limited liability safe space would be the supply of a copy of an archival item for a commercial purpose. The Representative expressed that without unlimited liability safe space, archivists and archival research would cease to function. Equally archivists recognized that limitations on liability could

be a get-out-of-jail-free card, therefore in the United Kingdom for instance, as a part of the membership to a professional body, archivists had to sign to a code of conduct which recognized the need to work within the boundaries of the relevant legislation.

149. The Representative of the Scottish Council on Archives (SCA) stated that archivists took copyright law very seriously. The Representative stated that archivists were law-abiding people, with strong professional ethics, who often found the copyright regime complicated, confusing and intimidating, especially within an international context. The Representative expressed that few archivists enjoyed the benefit of formal legal training, with most archives not really having the financial resources to pay for specialist legal advice. The Representative stated that research indicated that archivists worried copyright, the threat of litigation and whether or not they were acting lawfully. The Representative stated that archivists also worried about the reputational damage to their institution and to the archive profession, as a result of inadvertent or unintended copyright infringement. The Representative expressed that it was easy to understand why archivists and librarians worried, as they aimed to work within the law, and wanted with certainty that they were in fact acting within the law. The Representative stated that archivists and librarians were concerned about fairness, whether they were fair dealing or fair practicing, and reasonableness, for example, reasonable inquiry. The Representative stated that they often remained an element of doubt in the mind of the archivist, whether reliance on the exception was lawful or not. That element of doubt often triggered an unwillingness to rely upon, and benefit from, those lawful exceptions. The Representative stated that that was why exceptions alone were not sufficient. They had to be accompanied by a limitation on liability, a safe harbor that empowered archivists and librarians to have confidence in their own good faith interpretation and application of the law. A limitation establishing that when archivists and librarians acted in good faith, believing that they had acted in accordance with the law, they would not be held liable for inadvertent or unintended copyright infringement. Such a provision would enable archivists and librarians to take full advantage of the scope and opportunity, which copyright should afford. The Representative stated that libraries that did not have a provision of liability run the risk of undermining their own value and worth. The Representative stated that limitation on liability could take a variety of forms, for example, the United Kingdom copyright regime makes it clear that a librarian or archivist was entitled to rely upon the declaration from a user requesting a copy of material, as evidence that the material was being requested for lawful purposes. If the user had made a false declaration, liability for infringement lay with the user, and not with the librarian or archivist. The Representative stated that another recent example was provided by the government of Singapore. The government of Singapore had considered limitations on remedies as a possible solution to the orphan works problem. Under their proposals, archivists and librarians would be eligible for limitations on remedies if they could demonstrate that they had met specific requirements within the legislation and had acted in good faith for noncommercial purposes. The Representative suggested that there were various ways in which limitation on liability could be included in an international instrument, but reiterated that it was essential that it was included so that archivists and librarians could use the full scope of the exceptions they had available to them.

150. The Representative of African Library and Information Associations and Institutions (AfLIA) stated that though few, Africa's librarians were professionals who worked hard to make the best of the inadequate copyright system, to achieve their missions, and that they deserved support. The Representative stated that it was glad to see two of its supporters, the African Union and IFLA. The Representative thanked the Delegation of South Africa for its ambition and leadership in the passing of the Cape Town declaration, which clearly affirmed the expectations from libraries in the provision of access to information for development. The Representative stated that what librarians did not deserve was to be treated as criminals when they made an honest mistake. The Representative stated that when there was no principle of limitation of liability for libraries on its continent that was the reality. The Representative stated that if laws were clear, then there would be little need for lawyers. As lifelong university

librarian, the Representative stated that it had faced many situations where the law simply was not clear. For example, if an English speaking medical researcher needed urgent information that would go towards the saving of lives, and the only available information was written in Chinese, the law was unclear about permissible and impermissible translation. The Representative stated that the librarian would go for the translation, but that would be an honest mistake and should not land the librarian in legal complications. The Representative stated that in an institution running on a shoe string budget, legal action could be fatal especially since the threat of legal action was no idle one. The Representative stated that that prevented libraries and users from making the most of the opportunities they had. Therefore, when in doubt, librarians would turn to say no and the student or researcher would be deprived of legitimate access to information. The Representative stated that there was need to move away from the belief system that saw every librarian user as a potential offender. The Representative expressed that the librarians acting in good faith, and with strong reason to believe they were doing the right thing, should not be faced with fines or prison terms. The fight against piracy would not be won if librarians, who were key partners in delivering a balanced, legitimate, sustainable copyright system, were first in the firing line.

151. The Representative of the International Council of Museums (ICOM) stated that as it had mentioned in previous interventions during previous SCCR meetings, ICOM was in full support of its partners, libraries and archives, in their request to advocate successfully for international exceptions to copyright for activities consistent with their respective preservation and scholarly communications' missions. The Representative stated that ICOM wanted to take the opportunity to advocate that museums, too, should be added to the list of beneficiaries of copyright exceptions now proposed for libraries and archives in the SCCR, and that included limitations on liability. The Representative stated that that position was consistent with the findings of WIPO's own museum study, and was proposed in agreement with the IFLA and the ICA. On that basis, ICOM wished to also advocate for limitations on liability. The Representative stated that museums carried out scholarly communications in an environment where museums were expected to carry out such activities both in the online environment, in digital form, and on their own physical site. The cross-border nature of such activities, coupled with the characteristics of museum collections that included extremely diverse materials, unpublished works, whether scientific, historic or artistic, and even orphan works, including different media, posed significant copyright and access challenges in meeting the expectations of the 21st Century scholar. Therefore, the Representative stated that the chance of inadvertent transgression became very high, as those challenges museums faced were the same as the challenges faced by libraries and archives. The work of libraries, archives and museums was remarkably similar. Museum collections included study collections, archival materials and library collections, and museums engaged in scholarly pursuit and communication similar to libraries and archives; in addition, libraries and archives often held object and artifact collections similar to museums. The Representative stated that similarities of practice between archives, libraries and museums were already recognized by WIPO Member States. The Representative stated that Professor Crews, in his study on exceptions for libraries and archives, recognized that 44 WIPO Member States had also included museums as beneficiaries of those exceptions. For those reasons, representatives of the libraries were in agreement with ICOM that it was time to examine those issues holistically and add museums to the list of beneficiaries proposed for exceptions to copyright. The Representative stated that as was articulated in a meeting at Columbia University, the contemporary expectation was that libraries, archives and museums had to be where the scholar was no matter where the scholar may be situated physically. It was not enough anymore to expect scholars to come to the libraries, archives and museums.

152. The Representative of the International Association of Scientific Technical and Medical Publishers (STM) stated that STM's position on copyright protected uses of orphan works was published in December 2006 and included provisions to the effect that users who had not been able to identify, locate and contact the copyright owner, to obtain permission, despite a diligent

search, must not be penalized if the rights holder came forward at a later date. The Representative stated that an STM signatory statement had offered a safe harbor, with respect to the users of works considered to be orphan works, which were discovered to be works in which the signatories comprising the largest STM publishers, own the copyright. The same principle, namely that anyone who had conducted a reasonably diligent search could not be penalized, was expressed in a 2007 joint statement between the International Publishers Association (IPA) and IFLA. The Representative stated that STM continued to advocate for that principle, both in the public fora and in the publishing industry. The Representative stated that based on its experience, licensing also supported library document delivery services, resulting in the question of the liability of libraries not even coming to the fore. The Representative stated that with the main interest of publishers being, in broadest sense, the possible dissemination of works that they publish, STM believed that there was more scope for licensing in resolving that problem.

153. The Representative of KEI thanked the Delegation of Chile for the very interesting example concerning the work that the Committee was carrying out. The Representative stated that in terms of limitations for liabilities for libraries and archives, in order to ensure that society was well informed of its history, and to ensure that the present and recent past did not completely disappear, it was very essential that archivists and librarians carried out their public interest mission in a responsible and careful manner, without risking liabilities and lawsuits in the case of honest mistakes.

154. The Representative of the Karisma Foundation stated that the realities of libraries and archives in Latin America was that there was a clear lack of human resources, financial resources, technical resources and infrastructure, and often there were legal barriers which obstructed the work of institutions. Due to that, often those institutions were forced to deny basic services to users, such as interlibrary loans or cross-border loans. The Representative stated that those issues developed into obstacles to the exercise of rights to information, to knowledge, to culture, to education, which all persons had the right to. The Representative stated that in 2011, for example, several public universities and private universities in Colombia had received a letter of cease and desist from a collective management organization, which represented producers and distributors of audiovisual materials. The letter stated that libraries could not lend films in their catalog to students because they did not have the licenses and that they were not authorized to do so. The Representative stated that some university libraries, instead of starting negotiation processes with that collective management agency, started to defend the rights of the users to view those films as educational material. Nevertheless, other institutions decided to cancel those loans and adopted what was an absurd practice. Access to those resources became limited to teachers and professors for a certain number of hours and just for their classes. The Representative stated that that was a very complex and costly process. The Representative expressed that in another case, an audiovisual organization was at a crossroads when an indigenous group in the northern part of Mexico requested for a copy of archives, in order to ensure their economic cultural, religious and social rights in the territory. Specifically the group had asked for an old Spanish fictional film containing unique images of historic points in their history. The organization did not have the copyright to give a copy of that archive to them. Despite that, the indigenous people decided to make use of those images in their documentary, because they were convinced that they had a right to do so as their community was represented in that film. The Representative stated that it could continue to share more examples or more details about how those obstacles, for example how, around 20 or 30 copies of a Colombian novel had not been to be given to students and direct victims of Colombia's conflict who had wanted access to it, to carry out academic work whose main aim was to help rebuild their communities and societies. The Representative stated that another example would be one of a group of prisoners who were refused the rights to educational information as the only access they had was to a public library which collaborated with the prison service and the only way that that library had of obtaining works was through electronic copies and were able to do so. The Representative stated that it was as if economic

instruments prevailed over and above the enjoyment of people's right to culture and to education. That had important effects on library and archive loan services, in particular, in enhancing knowledge and information. The Representative stated that the Karisma Foundation believed there was a lack of a treaty, which recognized the liabilities and responsibility of archives and libraries to ensure they could act in good faith.

155. The Delegation of Ecuador stated that it agreed with the statement delivered by the Delegation of Chile, on behalf of GRULAC, and would like to refer to the topic of the liabilities of libraries and archives to say that copyright legislation was not fully understood and known by libraries and archives throughout the world. The Delegation stated that fact had already been mentioned by several organizations in the Committee. The Delegation stated that the responsibility that those organizations had for authorized copies, which was made publicly available, needed to be limited because use by third parties should not be the responsibility or liability of archives or libraries.

156. The Delegation of Nigeria, speaking on behalf of the Africa Group, stated that, the digital age had changed how information was exchanged and used. Librarians and archivists, while they were information professionals by reason of their work, were not lawyers and could not unpack the complex copyright laws, when trying to fulfill their fundamental role of facilitating access to knowledge. The Delegation stated that it was in support of the idea that libraries and archives needed to be able to fulfill their public interest role, free from fear of legal action and crippling costs if they made an honest mistake. The Delegation believed that the experiences that had been expressed by libraries and archives adequately informed the need for a limit on liability for copyright infringements, when the undertaken activities were in good faith.

157. The Delegation of Brazil aligned itself with the statement delivered by the Delegation of Chile, speaking on behalf of GRULAC. The Delegation expressed that it was its hope that the story about Brazilian diplomat Berta Lutz inspired the Committee. Over the years, the Delegation of Brazil and other countries had stressed the crucial importance of libraries and archives for the goal of public and universal education to be achieved. The Delegation stated that it was the view of the Delegation of Brazil that librarians and archivists acting within the scope of their duties should not be liable for copyright infringement, when the alleged action was performed in good faith. The Delegation stated that the Committee needed to define that term. The Delegation stated that based on the proposal co-sponsored by the Delegation of Brazil, good faith should be assumed to exist when there were reasonable grounds for believing that: A, the work or material protected by related rights was being used as permitted within the scope of a limitation or exception or in a way that was not restricted by Copyright or, B, that the work was in the public domain or under an open content license if it was found in a protected format. In addition, it was important to ensure for those Member States which provided for a secondary liability regime, that libraries and archives be exempt from any liability for the actions of their users. The Delegation stated that it was ready to work hard with all other Member States to ensure that the Committee made the right decisions. The Delegation stated that if the Committee were to succeed, it would ensure that many more stories such as the one about Berta Lutz would come to light for the benefit of future generations and our own.

158. The Delegation of the United States of America stated that it employed both specific and general exceptions to enable certain types of institutions to carry out their public service missions. The Delegation stated that in appropriate circumstances, Member States should recognize limitations on the liability of certain types of monetary damages, applicable to libraries, archives and other relevant institutions, along with their employees and agents, when they have acted in good faith, believing or having reasonable grounds to believe that they have acted in accordance with copyright law. Specifically in the United States, Section 504 C2 of the Copyright Act set forth remedies for copyright infringement and provided that libraries, archives and their employees and agents, acting in the scope of their employment, were not liable for statutory damages for the reproduction of works or phonorecords, if they believed or had

reasonable grounds for believing that their actions was a fair use under Section 107 of the Copyright Act. Beyond providing for specific exceptions for libraries and archives in Section 1201 D, although not a limitation on liability, but rather an exception, under certain circumstances, the Digital Millennium Copyright Act included an exception from the prohibition on circumventing a technological measure that effectively controlled access to a copyrighted work for a nonprofit library or archive that gained access to a commercially exploited copyrighted work solely to make a good faith determination of whether to acquire a copy of the work or to engage in conduct permitted under the DMCA. The DMCA also contained a provision requiring courts not to impose civil damages in any case in which a nonprofit library or archive sustained the burden of proving that it was not aware of, and had no reason to believe that its acts constituted a violation of Sections 1201 or 1202 of the DMCA. Those entities were also exempt from any criminal liability for such violations regarding technological measures or the integrity of copyright management information. The Delegation stated that it reflected those important provisions of its law in its objectives and principles document, and supported efforts to ensure that libraries and archives and their employees and agents should not hold liability for copyright infringement, when they acted in good faith, believing or having reasonable grounds to believe that they had acted in accordance with copyright law. The Delegation stated that its objectives and principles document reflected its approach to that and other issues the Committee had been discussing in that context. The Delegation stated that it found value in identifying broad objectives and in allowing individual countries to implement them as best suited to their domestic needs. Exceptions and limitations for libraries and archives helped to assist individuals in seeking, receiving, and imparting information so that could participate meaningfully in public life. The Delegation stated that Member States should recognize limitations on the liability of certain types of damages applicable to libraries and archives and their employees and agents that acted in good faith, believing or having reasonable grounds to believe that they have acted in accordance with copyright law. The Delegation stated that it was interested in hearing how other countries had implemented that principle and how in their copyright laws, the provisions operate, and what the effects of such provisions had been.

159. The Delegation of Nigeria stated that an international solution limiting the liability of libraries and archives needed not be open-ended. The Delegation stated that it would be necessary to moderate it with suitable qualifying conditions to ensure that only cases involving good faith uses, an exercise of due diligence in carrying out their respective mandates, enjoyed the benefits of the limitations of liability. Therefore, there was no doubt that a provision of that nature was germane to operations of libraries and archives as the predominant functions were in the realm of public interest. The Delegation stated that there had been important views that had been expressed on the difficulty faced by operators of libraries and archives in navigating the complicated arena of copyright legislation without honest mistakes that could expose them to liability for infringement.

160. The Delegation of the European Union and its Member States stated that the issue of liability of libraries and archives as such was not addressed under the European Copyright Framework. The Delegation stated that issues in that context may nevertheless be addressed at the national level of the Member States and by other areas of law, for instance the general principles of liability law and the respective solutions and approaches to that may differ in the individual Member States.

161. The Chair suspended that agenda item.

AGENDA ITEM 7: LIMITATIONS AND EXCEPTIONS FOR EDUCATIONAL AND RESEARCH INSTITUTIONS AND FOR PERSONS WITH OTHER DISABILITIES

162. The Vice-Chair mentioned that the Committee was going back to Agenda Item 7, limitations and exceptions for educational and research institutions and for persons with other disabilities, to listen to a presentation on the study for limitations for persons with disabilities.

The Vice-Chair stated that Professor Reid and his student research assistants would be presenting the scoping study.

163. Professor Reid stated that he was going to share with the Committee, a very brief overview of the scope of the study including his plans to study the categories of disabilities, the categories of copyrighted works, the accessibility, technologies and techniques and copyright implications and exceptions, limitations and interactions with accessibility law. Professor Reid mentioned that he would be sending out a questionnaire that he hoped to receive back from the Member States.

164. A student of Professor Reid stated that for the categories of disabilities that the study would be looking at, first the study would identify the relevant categories of people with disabilities, who were likely to face challenges accessing copyrighted works. At the very least, those categories could include: people who were blind or visually impaired; people who were deaf or hard-of-hearing; people who were print disabled; people who were deaf/blind or otherwise blind and hard-of-hearing or deaf and visually impaired; people who had physical and motor disabilities; and, finally, people who had cognitive and intellectual disabilities.

165. A student of Professor Reid stated that the study would identify the relevant categories of copyrighted works where accessibility challenges arose. Those categories would at least include dramatic and nondramatic literary works which included web content and software, pictorial, graphical and sculptural works, sound recordings and audiovisual content.

166. Professor Reid stated that the study was going to then take those categories of copyrighted works and those categories of disabilities and would identify existing and likely future technologies and techniques that were used to provide accessibility to those categories of disabilities and those categories of copyrighted works. The Professor stated that he had highlighted a few examples in the handout that the Committee could look at. The examples listed included: closed captioning, video or audio descriptions for people who were blind or visually impaired; the interactions with text of screen reader software; cloud sourcing and automated adaptation techniques; and manual adaptation systems and techniques. With those techniques and technologies in mind, the Professor stated that the study was going to then analyze whether self-help or third-party efforts to engage in those techniques and use those technologies, would implicate exclusive rights in the categories of copyrighted works that were earlier mentioned. The Professor stated that the study would set aside the implications that were already addressed by the Marrakesh Treaty and techniques and technologies that did not conceivably implicate copyright issues. The Professor stated that he was unlikely to be looking at wheelchair ramps and physical building accessibility, for example. The Professor stated that where accessibility technologies and techniques did implicate the exclusive rights that were mentioned, the study would analyze the extent to which existing exceptions and limitations in the law of the Member States, such as fair use and fair dealing, or more explicit exceptions and limitations dealing with accessibility, may obviate the need to seek a license to avoid copyright infringement. The Professor stated that if time and resources permitted, he hoped to analyze the extent to which those technologies and techniques were required under accessibility laws of the Member States. For example, the closed captioning and video description regulations of the Federal Communications Commission in the United States of America, and the extent to which Member States had harmonized accessibility law with copyright law, including through the use of exceptions and limitations.

167. A student of Professor Reid stated that to generally assist in the study, it was its intention to submit to the Member States a short questionnaire regarding the Member States' copyright law. The questionnaire asked Member States to provide brief qualitative information about the provisions of their copyright and accessibility laws. A student of Professor Reid's stated that the information required would be specific to copyright and disability and included both general and specific questions.

168. Professor Reid stated that he anticipated finalizing the questionnaire for circulation in mid-December and that he was hoping to receive finished responses by mid-February with a goal of completing the first draft of the study by March 17, 2017, and presenting the final study after getting feedback from stakeholders at the May 1- 5, 2017 Committee meeting.

169. The Vice-Chair thanked the Professor for the presentation and opened the floor for questions.

170. The Delegation of Nigeria, speaking on behalf of the Africa Group, thanked Professor Reid, Professor Ncube and their team for the presentation and for the study to be undertaken. The Delegation stated that the scope appeared to cover a wide breadth of important areas and it just wanted to wish the group a speedy exercise and affirmed that the Africa Group would provide all the information needed.

171. The Delegation of Chile, speaking on behalf of GRULAC, stated that it was looking forward to receiving the questionnaire and to contributing to that study, which was important for the advancement of the work of that Committee.

172. The Vice-Chair thanked Professor Reid for the scope of the study and returned to the outstanding items on the Agenda of the Committee.

AGENDA ITEM 6: LIMITATIONS AND EXCEPTIONS FOR LIBRARIES AND ARCHIVES (CONT.)

173. The Chair stated that the Committee was ready to continue the discussion on the agenda item related to limitations and exceptions for libraries and archives, and it would go to the next topic on the chart. The Chair opened the floor to item number nine on the chart, technological measures of protection.

174. The Representative of IFLA stated that it was a basic principle that exceptions and limitations granted by law should not be overridden by the application of technological protection measures. The Representative stated that libraries did not object to TPMs in principle, as they recognized that right holders needed to use those in certain circumstances to protect works. The Representative stated that seeking the balance that it believed was fundamental to properly structure copyright laws, it was necessary that libraries be allowed to remove measures, when necessary to fulfill their public interest mission and to use existing exceptions. The Representative stated that content protected by TPMs could include the entire range of content acquired and made available by libraries, not just music, movies, software and games, but also e-books, scholarly articles and content stored on protected areas of a website, behind a pay wall, for example. The Representative stated that as libraries were buying a growing share of content in digital format, TPMs had become a significant factor in library work. While TPMs could play a role in the fight against piracy, as a compliment to the legal system, they could be and were also used to prevent libraries and archives from fulfilling their public service missions, by making it impossible to perform activities permitted by exceptions and limitations. The Representative stated that an example of that was on preservation. A core library activity was impeded if the library did not have authority to copy digital works, such as sound recordings or e-books that often needed to be copied before they deteriorated. Likewise, lending, another core library activity, could be rendered impossible if TPMs prevented copying a work, to the owning library's secure server. TPMs had rendered the United Kingdom's protection for data mining, ineffective. While researchers had a legal right to perform such analysis on text, they did not have the legal right to remove the TPMs that prevented them from doing that work. The Representative stated that libraries may not be able to use assistive technologies, such as read-aloud functionality, or screen readers, that went to provide access for patrons with disabilities, when the content they needed was hidden behind TPMs. The Representative

stated that a recent decision by the United States of America permitted override by libraries and educators, for purposes of criticism or comment, and for educational or nonprofit uses, were permitted but only via a protracted and costly regulatory process, that would not have been required for work not like TPMs. The Representative stated that it saw a way forward through the work of that Committee. Member States addressed issues proposed by TPMs by including Article 7 of the Marrakesh Treaty, which provided a useful precedent for language on TPMs to be included in a treaty for libraries and archives as was indicated that “contracting parties shall take appropriate measures as necessary to ensure that when they provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures, this legal protection does not prevent beneficiary persons from enjoying the limitations and exceptions provided for in this treaty.” The Representative stated that without a provision that ensured that libraries, archives and museums could circumvent TPMs in order to undertake activities recognized as legitimate under copyright exceptions, all other copyright exemptions risk being rendered effectively useless, at least as far as digital content was concerned. The Representative stated that there, an override of TPMs in specific cases was an indispensable tool for realization of numerous other long recognized library exceptions.

175. The Representative of the German Library Association stated that copyright was limited for purposes of the public good. Technical protection measures could impede national and research libraries to fulfill their task in the scope of their respective copyright limits. The Representative stated that copyright protection prohibited relevant uses of works without consent of the rights holder. As that legal copyright protection was not enough protection for works on the Internet and other electronic media, legal protection for TPMs was introduced in the treaty. That protection constituted another layer of protection. That second layer was not supposed to extend the copyright protection, but to strengthen the copyright protection itself. Those two protection layers had to be totally congruent. The Representative stated that if they were not congruent, there was the danger that TPMs prevented actions that were not part of the copyright protection. The Representative stated that the legal protection of TPMs had to follow not only the copyright protection but also those limitations. The Representative stated that with reference to the discussion, at least within the scope of exceptions for libraries and archives, TPMs should not be protected. In the library sector, TPMs could prevent libraries from protecting archival copies that went to preserve cultural and scientific heritage for posterity. The Representative stated TPMs could complicate the electronic legal deposit of e-books and e-journals and web harvesting. That, the Representative stated, was an international issue as long as the rights holder, who implemented TPMs, was located in another country than the libraries and archives which used those materials.

176. The Representative of ICA stated nations that had ratified the WIPO Internet treaties had amended their national Copyright legislation to prohibit the circumvention of TPMs. That prohibition on circumvention of TPMs was of great concern to archivists. The Representative stated that that may be surprising, since a large proportion of archival holdings were not created for commercial purposes and may not even be protected by TPMs. Nonetheless, as archives still mailed encrypted materials, they could need to circumvent TPMs in two situations. The first situation, archives typically acquired materials after they were no longer needed for business purposes and retained no commercial value. At that stage, the passwords, encryption keys, et cetera, could have been lost or forgotten, and the archives may be forced to circumvent the TPMs to examine the material to see if they wanted to acquire it at all or to gain access in order to describe it and make it available to users. The Representative stated that in the course of doing so, if there could be personal information or sensitive materials to which access needed to be restricted. The second situation was one where encrypted works were acquired earlier in their life cycle, for example, in the course of legal deposit or in order to provide an archival copy of all works produced by an organization, and the archives needed to access such materials for purposes that served the public interest, for example, preservation or reproduction for research and private study. The Representative stated that a recent Canadian study regarding online piracy revealed that rights holders were far more interested in developing convenient,

well-priced legal services than strengthening anti-piracy measures. In practice, the American digital act anticircumvention provision had done little to stop online piracy, instead, such provisions stifled a wide range of legitimate activities. The Representative stated that it sought to ensure that each Member State recognized the legitimacy of non-infringing acts performed by archives and libraries in other countries. Fundamental to that goal was a mandatory provision that parties provide a general exception to the circumvention prohibition in order to achieve legitimate uses. The Representative stated that to do otherwise, undermined copyright's fundamental balance. The Representative stated that legal protection for TPMs did not have to prevent archives and their users from benefiting from the limitations and exceptions provided for in whatever instrument emerged from those discussions.

177. The Representative of LCA stated that the United States of America's implementation of the WCT and WPPT obligations, concerning TPMs, Section 1201 of the Millennium Copyright Act, had imposed a heavy burden on libraries and educational institutions. The Representative stated that instructors at all levels used segments of films and other audiovisual works in classes to illustrate specific points. Those uses were permitted under fair use, and the exception for classroom use. The films, often borrowed from collections of libraries, were in formats such as DVDs which were technologically protected. Thus, instructors needed to circumvent the technological protection in order to make classroom uses of those segments. However, the breadth of the Section 1201 prohibited the circumvention. The Representative stated that that forced libraries and educators to participate in a rulemaking every three years to obtain a temporary exemption. The rulemaking was a burdensome and led to uncertainty. The exceptions that had been granted thus far treated different kinds of educational institutions differently. They were complicated, inconsistent and difficult for libraries and educational institutions to apply. The Representative stated that a clear, simple, permanent exemption for libraries and educational institutions to engage in activities permitted under copyright would better serve public interests without compromising the interests of rightsholders.

178. The Representative of EBLIDA stated that there were three things about technological protection measures or TPM. The first one was on visually impaired people with the Article 7 of the Marrakesh Treaty, that contracting parties should not prevent treaty beneficiaries from enjoying the limitations and exceptions it provided. The Representative stated that however, original implementation of Article 7 could delay its purpose, for example the approach taken in the European Union's recent draft directive to implement the Marrakesh Treaty made no specific mention to TPMs not being allowed to interfere with the exceptions and limitations required for implementing the Treaty. The Representative stated that although directives made were mandatory, three of them merely provided that Member States' national appeal systems should apply, in case of interference by TPMs in the context of the directive. The Representative stated that that did nothing to improve the situation for Europe's visually impaired people who were prevented by TPMs from accessing content in accessible formats. The Representative stated that it seemed as if the intention was to contact the publisher and mount an appeal, wait for it to for several weeks and months as it went through the national appeal system, and meanwhile, continue to be significantly disadvantaged compared to fully sighted people. The Representative stated that there was a clear public interest in allowing legal deposit libraries to circumvent TPMs in order to preserve digital content. It could be difficult to contact the rights holders, since many were small to tiny and often short lived, and needles in haystacks. There was no way to circumvent TPMs to preserve legal deposit copies but that forward thinking approach was not the norm. The Representative stated that without global action, TPMs would lose their digital control and scientific heritage forever. The Representative stated that for research, its colleague from IFLA had well mentioned the fact that TPMs could prevent researchers with text and data mining exception from copying database. Although publishers needed to protect the integrity of their platforms, researchers needed to be able to copy entire databases. They often needed to simultaneously perform a search across different databases to find certain text and data and if they by TPMs, researcher could lose control over the conduct of their research, which could distort their results. The Representative

stated that a solution was in the circumvention of TPMs that could be recognized at the international level.

179. The Representative of SAA stated that to ensure a complete and authentic record, archives must hold information in all formats, whether analog or digital. When archivists worked with electronic records, the kind that dominated the current archives, the problem with technological protection measures arose on an almost daily basis. The Representative stated that as a university archivist, amongst the most important materials it collected were the personal archives of scientific research faculty. In the past, those so-called faculty papers included more than just paper. They included photographs, audiovisuals, research data, et cetera. The Representative stated that today, however, it was not just a matter of emptying a few file cabinets and gathering up lab notebooks, instead archivists needed to copy all of their electronic files from laptops and remote disk drives. The Representative expressed that to obtain the historical record of their scientific and public work, the first level was just a simple bit by bit copy, which by itself was not readable. Once the archivists located the software to read the file, some of the content could be behind passwords or other protection measures or stored in a computer program that it had to reverse engineer to merely read the data. The Representative stated that all of that was necessary even before it could assess what was worth keeping and what lacked long term value. The Representative stated that in a recent example, about the personal archives of an important biophysicist, in addition to the usual 10 linear meters of paper files, the archivists located on biophysics' various workstations, laptop servers and 18 gigabytes of files with over 18,000 separate files in more than 1400 different filing formats, all dating back to the early 1980s. The Representative stated that it had a similar instance in the case of a chemist. Although not all of that content was controlled by technological protection measures, its data preservation specialist needed to work around the access controls, merely to allow the archivists to see the files for assessment purposes. If the archivists were able to determine that the material could be of enduring value, further copying and decoding was going to be necessary before they could preserve and make it available to researchers or screen for data privacy issues. The Representative stated that that was just another example where the archival mission required archivists to do something, which strictly speaking, copyright law did not allow them to do. The Representative stated that archivists did not seek to violate the law. Archivists just needed to do what was technologically necessary for them to complete their work. The Representative stated that appropriate exceptions and imitations should exist for such purposes.

180. The Representative of eIFL.net stated that the WIPO Copyright Treaty and the WPPT required contracting parties to provide adequate legal protection and effective legal measures against the circumvention of effective technological protection measures that restricted acts, which were not authorized by the authors concerned or permitted by law. The Representative stated that unfortunately, many countries, even some that were not party to the WCT, had implemented that requirement to protect circumvention of technological protection measures to restrict acts that otherwise would be permitted by law; in other words, to restrict acts that fell within the scope of an exception or limitation. The Representative stated that that was problematic for libraries, as technological measures could also be applied to works in the public domain, thus, in effect, extending the term of copyright protection indefinitely. The Representative stated that TPMs became obsolete when the platforms on which they operated ceased to exist or the publisher stopped supporting access, rendering digital content, inaccessible. The average life of a TPM was said to be between three and five years. The Representative stated that WIPO created that problem through the WCT and the WPPT, and it was up to WIPO to fix it. The Representative stated that luckily, the Committee had some useful precedent language in Article 7 of the Marrakesh Treaty. The Representative stated that without some language, any limitations and exceptions recognized for libraries would themselves become obsolete, and all of the copyrighted material created in the digital era would be inaccessible.

181. The Representative of ARA stated that archivists were extremely worried about the impact of technical protection measures on their ability to carry out normal archival functions in the digital age. Such measures were anathema to the way archives work because quite simply, they denied access in a way which could not be avoided. The Representative stated that there were no low cost, easy, or legal ways in which archives could work around technical protection measures. To explain the impact on archives, The Representative stated that it wished to take an example from a large archive in the United Kingdom. The archive received content on CD-ROMs from a private individual who was technically literate. In order to protect the content, that individual added strong copy protection encryption to the CD-ROMs but unfortunately that person died very suddenly and before the encryption keys had been passed on. The person's family did not know the encryption keys, either. The CD-ROMs were then completely useless to the archive as no encryption key meant no access. The Representative explained that some archives in the United Kingdom had policies that did not allow them to accept into their collections materials that had a known impediment to managing the items, and they explicitly included Technical Protection Measures in that category. Before investing in preserving and making content available, archives needed confidence that that work would not be in vain. The Representative stated that was an important principle but that an archive was funded for the public sector, charity or not for profit. The UNESCO process project was a collaborative venture between UNESCO and a number of international heritage stakeholders. The Representative expressed that process stood for platform to enhance the sustainability of the information society transglobally. The project's recent report guidelines for the collection of digital heritage for long term preservation warned that "legal impediments to preserving or making accessible digital heritage will weigh heavily on selection decisions. There was a strong risk that the restrictive legal environment would negatively impact the long term survival of important digital heritage." The Representative stated that if it were to avoid that scenario, and the consequent loss to the direct record of human society, technical protection measures needed to be subject to limitation for archives.

182. The Representative of KIA stated that TPMs were a legitimate and an important measure to protect certain works, data and technologies from unauthorized uses. The issues raised by libraries and archives concerned the legal protection that one gave to the technological protection. The Representative stated that in some legal systems, the 1996 WIPO Copyright Treaty, the WCT, had been implemented to provide automatic legal protections for all TPMs, with only very limited exceptions. Many of the problems explained by the libraries and archives explained the problems with TPMs and there were many more unintended consequences. The Representative stated that one reform it supported was to be more restrained in the granting of legal protection to TPMs, and only to provide such legal protection to TPMs when they are registered, had paid fees, and met standards, including addressing how legitimate exceptions to copyright could be exercised and how works could be archived and preserved. The Representative stated that that would not restrict the uses of TPMs, but only narrow the grounds under which legal protection was given to a technology protection. The Representative believed that that reformed approach was consistent with Articles 11 and 12 of the WCT.

183. The Delegation of Nigeria, speaking on behalf of the Africa Group, stated that it recognized that libraries were buying a growing share of content in digital formats, and that it had listened to the practitioners who had stated that while technological protection measures served a role in copyright, including fighting piracy, they could also prevent libraries and archives and museums from fulfilling the objective of serving the public good. The Delegation stated that it would like to draw attention to Article 7 of the Marrakesh Treaty which had been referenced in that Committee. The Delegation stated that that Treaty recognized the role of TPMs in obstructing access to information and therefore made exceptions to that instrument, that would enable circumvention of technological protection measures. The Delegation believed that the same principle should apply to libraries, archives and museums and therefore

supported the need for them to be able to acquire and apply tools to remove TPMs and use the digital copyrighted content to fulfill their public service interests.

184. The Delegation of the European Union and its Member States stated that technological protection measures were an acceptable tool not only for the effective protection of copyright and related rights, but also for the exercise of those rights in order to develop innovative services. The Delegation stated that right holders and investors in invasive services relied on TPMs in order to develop Internet services providing access to copyright protected content, such as streaming activities, on demand services, online software distribution, thus, contributing to the increase of the offer of digital content worldwide. The Delegation expressed that the use of TPMs should not prevent beneficiaries of exceptions and limitations provided for in national law from benefiting from them. The Delegation stated that the European Union legislation promoted voluntary measures taken by right holders, including arrangements between right holders and users. If those voluntary measures were not taken, Member States were obliged to ensure that right holders made available to the beneficiaries the means of benefiting from them. The Delegation stated that Article 6, Paragraph 4 of Directive 2001-29, allowed right holders to take appropriate or voluntary measures, and entitled Member States to intervene so as to ensure that the beneficiaries of certain exceptions that were deemed to be of public interest benefitted from them, notwithstanding the absolute prohibition of circumventing TPMs. The Delegation stated that balanced solutions between the application of TPMs and the benefits of the establishment of exceptions and limitations could be achieved through national legislation in the European Union Member States.

185. The Delegation of the United States of America stated that it appreciated hearing more about the national experiences of WIPO Member States, with respect to TPMs for libraries and archives, including through Professor Seng's study and from the statement shared by the Delegation of the European Union on that topic. The Delegation stated that In the United States of America, there were both specific provisions to provide libraries with the right to circumvent TPMs, in certain circumstances, to access material in order to determine whether it should be purchased to be added to the library's collection. There was also a triennial process as it had been mentioned earlier, through which parties including libraries and archives could exercise exemption from the prohibitions on circumvention of TPMs, in order to further their work in any manner in which they sought to obtain one of those exceptions. The Delegation stated that the United States of America required that a party seeking those exemptions show that they were users of a copyrighted work, who were or likely to be in the succeeding three-year period, adversely affected on the prohibition for their ability to make noninfringing uses of the copyright act of a particular class of copyrighted works. It was envisioned by the United States Congress, that the DMCA sought to balance the interests of copyright owners and users including the personal interests of consumers in the digital environment. The Delegation stated that in addition to providing limitations on the liability of service providers, the DMCA prevented protection measures to protect copyrighted works, as well as to prevent the trafficking and anticircumvention devices. The Delegation stated that in its objectives and principles documents, which it had previously submitted to the Committee, the Delegation had noted generally that libraries and archives should have the ability to circumvent TPMs, in order to ensure the responsible and lawful exercise of exemptions and limitations by libraries and archives, while at the same time stating that limitations and exemptions should appropriately ensure that libraries and archives could preserve and provide access to information developed and/or disseminated in the digital form and through network technologies. The Delegation stated that it saw those mutually enforcing principles and believed that each Member State should be free to craft its own law to achieve those goals. The Delegation mentioned that the United States' Copyright office had recently requested public comments on whether the DMCA's existing categories of permanent exemptions were necessary, relevant and/or sufficient. The Delegation stated that it had sought feedback on how the permanent exceptions affected the activities of libraries, archives, museums, educational institutions and others and it had asked about how the existing permanent exemptions might be amended to better facilitate such

activities. The Delegation stated that that was a domestic inquiry of the United States of America that it took very seriously. The Delegation stated that it would be happy to share more information on that policy process as it advanced.

186. The Delegation of Brazil stated that in many national laws, Member States provided legal protection and effective legal remedies against the circumvention of technological protection measures or digital rights management programmes. Those dispositions affected the ability of libraries and archives to make full use of exceptions and limitations to copyright. In that scenario, the Delegation stated that it encouraged all members to take appropriate measures to ensure that legislation against the circumvention of technological protection measures did not prevent libraries and archives from enjoying limitations and exceptions in the course of their activities. The Delegation expressed libraries needed to be allowed to fulfill their missions unhampered by technological or any other hurdles. The Delegation stated that it wished to quote Isaac Asimov who wrote that “I received the fundamentals of my education in school, but that was not enough. My real education, the super structure, the details, the true architecture, I got out of the public library. For an impoverished child whose family could not afford to buy books, the library was the open door to wonder and achievements, and I can never be sufficiently grateful that I had the wit to charge through that door and make the most of it.” The Delegation stated that it could never be sufficiently grateful that Asimov charged through that library door unimpeded by any physical or technological obstacle.

187. The Delegation of Ecuador stated that it considered that libraries and archives should be allowed to acquire tools that enabled them to circumvent TPMs through the design of exceptions and limitations that were well balanced and appropriate for them. That was because such measures, as several of the NGOs who have spoken had said, could be obstacles to the carrying out of public policy.

188. The Representative of the Karisma Foundation stated that it associated itself with those organizations that had spoken before it and that it wanted to share with the Committee, an experience that recently occurred in Colombia. The Representative stated that the library had a whole collection of films that had become an obstacle for the institution because they neither had the tools nor the legal protection, nor the legal means for them to circumvent TPMs. The Representative stated that the library could not transform those films into a more appropriate form. Due to the lack of space, and the almost nonexistent demand from the community for that collection, inter alia, because neither the institutions nor the community had the necessary technology to see those films, the institution was considering to getting rid of that film collection, which meant that they might be getting rid of a unique resource for the community.

189. The Representative of AfLIA stated that libraries in Africa were at the forefront of efforts to adequately place Africa in the global knowledge society. The Representative stated that it was doing that by working to make the most of digital technologies to provide access to the wealth knowledge to all Africans. Given the critical role of digital resources, anything that served to make them less accessible or less user friendly was likely to have a disproportionate effect on Africa. It was therefore deeply frustrating when, for example, a library user found an article or resource that he or she needed but could not take a personal copy or share it with a collaborator. Those were actions that were often perfectly legitimate under exceptions and limitations, and certainly caused no unreasonable harm to rights holder interest. The Representative expressed that when there were TPMs in place, it was the software and not the law that decided what went. Given that it was the law itself that had been undermined, it was therefore hard to understand why the law itself in many countries made it an offense to remove those measures without effective provisions to allow libraries to access anticircumvention tools, making well-conceived exceptions and limitations designed to promote a balanced system, a dead letter. The Representative stated that there was a need to provide an effective alternative to piracy, and that would not be achieved by treating those fighting for illegal means of providing access to information, as pirates themselves.

190. The Representative of ICOM stated that it supported protections against infringement for reverse engineering in certain circumstances highlighting the effects on works and collections particularly to digital works. The Representative stated it was often the case that museums faced the need to preserve artistic works digitally over time. TPMs could affect the ability to transpose digital works onto alternative formats as a preservation measure. The Representative stated while the museum could have the permission of the author, or the artist, to transpose the work into alternative formats as a means of preservation, the works lawfully embedded by the author or artist may be protected by a TPM. That caused overwhelming legal impediments to preservation, thereby threatening the long term sustainability of the work in the collection.

AGENDA ITEM 8: OTHER MATTERS

Resale Right

191. Professor Ricketson made a presentation of the study on resale rights which would be found at the webcasting link of WIPO: (Friday, November 18, 2016 Afternoon Session):

<http://www.wipo.int/webcasting/en/?event=SCCR/33#demand>

192. The Chair stated there was a difference between the different types of creation and that as opposed to the authors and performers, visual artists found themselves in imbalanced situations, when faced with other kinds of creators. The right sought to balance situations where collectors and galleries were illicitly enriched but the resale right was not a guarantee for a constant income. In terms of the analysis of 14Ter, from the Berne Convention, Professor Ricketson had mentioned some things that were very important to take into account, in the analysis of the resale right established specific parameters but the Berne Convention did not indicate what sales would be affected by the resale right, whether private transactions, duration of the right or management of that right. Most of these issues had to be addressed in national legislations and Article 14 was a starting point for any discussions taking place on that subject. The resale right corrected existing imbalances for visual artists including for indigenous artist who could be entitled to the right as well.

193. The Delegation of Argentina stated that in some countries the procedure of buying and selling art works, and the prices of works and exports were not very transparent. As a result, sellers and buyers did not want to justify their income, or the heritage of a work. The art market sometimes encouraged under the table operations. The resale right proposal did not really benefit intermediaries, as the investors would then look for other markets that would not include those intermediaries. Some young artists were not interested in the resale value of their works, as their main concern was the first sale and were not interested in any potential advantage to come in the subsequent years, as their needs were in the present. On the contrary, well known authors were the ones that benefitted most from the resale right because their works had a market which was established and that right implied an immediate advantage. The transaction of the works of well-known artists seemed to take place in a transparent market, because the buyers needed to have the authenticity of the works proven. The resale right was supported by well-known artists whereas, the young artists did not. It asked whether the study proposed other incentives.

194. The Delegation of France reminded of the reasons in why in 1920, France introduced that right into its national legislation. The main reason of the resale right was the desire to protect and the right had a social dimension, which was extremely important. In 1920, the French government and Parliament had observed that when artists died, their families and successors would live in poverty, even though the artists' work was still of large value and was being sold on the market at a high price. France put in place that system in 1920 to protect artists from poverty but that was not the only element of protection that motivated the creation of the resale

right. Another important element was on the use of French resale rights which should not be confused with the English translation. There was a difference between droit de suite and resale right. Droit de suite allowed the artist to follow up their work throughout the life span of that work, and was not just an economic element to protect them from poverty, but also included an element of control for the artist. That meant that once the artwork left the workshop, the artist could follow up on the work and that the element of following up was moral and extremely important and could be used by indigenous communities as proven by the implementation of the right in Australia in 2009.

195. The Delegation of Turkey speaking on behalf of Group B, thanked Professor Ricketson the presentation.

196. The Delegation of Nigeria, speaking on behalf of the Africa Group, thanked Professor Ricketson for his informative presentation and stated that it had taken note of the fact that Professor Ricketson had made the case of why authors should continue to benefit from subsequent exploitation of their work, and from his presentation, highlighted the impact that that had on indigenous artists which certainly applied in the African context. The Africa Group welcomed continued discussions on resale rights in the SCCR.

197. The Delegation of Senegal stated that the situation which had given rise to the resale right in France was very topical in Africa and for developing countries in general. Copyright aimed to establish a permanent legal link, that was not just economic, but a legal link between the artist and his work. The resale right allowed the artist to do so. It expressed its support and agreement with the study and thanked all the delegates of all the Member States for their open spirit, which had made that presentation possible. It welcomed the fact that new countries like the Delegation of Kenya aimed to introduce the resale right into their national legislation and in so doing would join more than 50 percent of all Member States who had already adopted the resale right. It questioned Professor Ricketson about the arguments on the negative impact that the resale right had on art.

198. The Delegation of Latvia, speaking on behalf of CEBS thanked the Delegations of the Republic of Congo and Senegal for putting together the proposal on the resale right. The Delegation thanked Professor Ricketson for his presentation and had listened to the presentation, on the various aspects of the resale right, with great interest. It was a good basis for further discussions and the elements in the presentation would generate interesting, fruitful discussions among Member States.

199. Professor Ricketson responded to that set of questions, and his response would be found at the webcasting link of WIPO: (Friday, November 18, 2016 Morning Session)
<http://www.wipo.int/webcasting/en/?event=SCCR/33#demand>

200. The Delegation of Malawi thanked the Delegations of Senegal and the Republic of Congo for putting forward the resale right proposal. It aligned itself with the position of the Africa Group, in support of the resale right provision and stated that it was very enlightening as Malawi was thinking of introducing the resale right. As digital online creations were excluded from the resale royalty right, it wanted to know whether the resale royalty right applied to works that were resold online.

201. The Delegation of the European Union and Member States thanked Professor Ricketson for his presentation. The Delegation stated that as it had pointed out in the past, it attached great importance to the resale right, which had been recognized in the European Union's legal framework for more than a decade, through dedicated legislation applicable in all 28 Member States. That topic was of high importance for creators from all countries and regions of the world, and it would be happy to share its experiences in that regard

202. The Delegation of Côte d'Ivoire stated that it was following the conversation on resale rights with great interest. Professor Ricketson's descriptions and diagnosis of what had happened in Australia were strikingly similar to what happened in Côte d'Ivoire. The resale right in Côte d'Ivoire was carried out and managed through the collective management system, and so far, everything had been working well. The Delegation asked which regulatory channels had to be followed to address imbalances injustice against visual artists.

203. The Delegation of China thanked Professor Ricketson for his presentation and study which had helped the Committee understand more about the resale right. China was considering the introduction of the resale right and it was amending the third amendment of its copyright law, but it hadn't finished its amendment. Therefore, the presentation by Professor Ricketson, in the framework of the SCCR, was something that the Delegation paid attention to and it had helped a lot.

204. Professor Ricketson responded to that set of questions, and his response would be found at the webcasting link of WIPO: (Friday, November 18, 2016 Morning Session)
<http://www.wipo.int/webcasting/en/?event=SCCR/33#demand>

205. The Representative of the Canadian Copyright Institute (CCI) thanked the Delegations of the Republic of Congo and Senegal for bringing that excellent motion to the floor. Visual artists in Canada had been striving for the artist resale right for many years. Artists were poor in Canada and among them, visual artists were the poorest. Even some of its most respected and awarded artists were living well below the poverty line. Visual artists on average made about 18,000 a year, and more than half of the visual artists in Canada were earning less than 8,000 a year, which was well below the poverty line. It did not think that enough attention had been paid to retired artists as in Canada, retired artists had been extremely economically vulnerable, and even though the value of their work had increased so much over time, on the resale market, they themselves had been incapable of creating work and had been struggling with extreme poverty. The beauty of the artist resale right was that it would bring income to senior artists whose work had often been most valuable when resold throughout their lives. Rich bodies of art had contributed to them by artist members of more than 600 first nations and it was valuable that the artists could see a little profit of their own work. In Canada middle men were immediately reselling indigenous work for triple the cost they had paid for it. The resale right could immediately protect against that through the law and could empower indigenous artists.

206. The Representative of the European Visual Artists (EVA) stated that it was a collective management society whose members were nonprofit organizations and whose duty was to ensure that sure that the artists' copyright was safeguarded and that they were always remunerated, as that was there right. While they did not receive very much, artists contributed to the value and richness of many countries. A study of the global visual art sector had shown that 391 billion U.S. dollars had been generated from visual works and 6.7 million jobs created while artists themselves did not get very much from those figures. A study from 2016 had indicated that in the art market, the annual income from global sales in 2015 was 63.8 billion U.S. dollars and the United States of America was number one with 43 percent of the market, but did not have a resale right. The United Kingdom, the country in second place, with 21 percent of that market, had had the resale right for 10 years, and that China was in third place with 19 percent of the market. The figured indicated that the introduction of the resale right had no effect on the very efficient and resilient art market in the United Kingdom. It had been involved with the introduction of the harmonization of the resale right in the European Union and led its introduction in the United Kingdom. London was the biggest art market in Europe, and was dominated by the biggest auction houses. It made no sense to only have national solutions. The harmonization in Europe had been concluded and had been fully applied since 2012, with regular meetings at the national and European Union level, of art market professionals. A study in Europe had shown that there was no proof there had been a move due to the resale right and since marking its tenth anniversary of the resale right, numbers in the

United Kingdom had indicated that over 81 percent of the artists used earnings from the resale right to pay for living expenses and only 30 percent were estates receiving money. From the 50 best earning authors from resale right in Australia, 22 were indigenous people. As the art world and markets were getting larger it was important for artists to benefit from the resale of their works.

207. The Representative of the International Confederation of Societies of Authors and Composers (CISAC) thanked Professor Ricketson for his enlightening presentation and stated that the resale right was very important for visual artists as it offered a modest but important source of revenue for them. The right also promoted transparency in the art market. Some artists had described the right as a way to help them know where their children are around the world. Most importantly, it was also about fairness and it was important to remember that. It was a right based on fairness and justified on the basis of the unique nature and characteristics of visual arts which were very different from other forms of art and creativity. When visual artwork increased in value, it was because of two things: there was only one original, genuine copy and the reputation of the artist had increased. This was different from the situation of music or films as when a song was popular, it saw more commercial success, sold more copies, whether on CDs, downloads, or streams. The song generated more royalties to those who were involved in the creation because of its popularity and copies. That was not the case when it came to visual art, and there were no more copies. The second reason for the increase in value was because of the reputation of the artist. The Committee had heard that the first law on the visual art of the *droit de suite* was introduced in France in 1920, against the backdrop of artists starving and the families living in very poor conditions. Today that right had been recognized in the European Union and in 80 other countries around the world. International law on visual art was an area which had not yet been harmonized. The right existed in the Berne Convention but it was not mandatory, and as a result, some Member States had recognized it and some others had not. The goal was to ensure that the descendants of the artists were sharing in the proceeds of the sale of the work in auction houses and galleries, not only because that was fair, but also because it was unfair that only the seller in the auction house benefitted from the increase in value. Critics of the resale rights and the auction houses had argued that the resale right would kill the art market, but it did not. Therefore it was time to make that right a universal right and a mandatory, fundamental element of international law. The art market today was global and that the problems visual artists faced, were global and required a global solution.

208. The Delegation of Cameroon thanked the Delegations of Senegal and the Republic of Congo its proposal and thanked Professor Ricketson and stated that it had a national museum in Cameroon, where there were a large number of indigenous artists who had voluntarily given their works of art to that museum as a direct sale. In such cases how could the original work be followed when it was exhibited in a museum.

209. The Delegation of Chile, speaking on behalf of GRULAC, thanked Professor Ricketson for his presentation and his availability to share that study. The Delegation thanked the Delegations of Senegal and Republic of Congo for the proposal already submitted in past sessions. It reiterated its concerns on the inclusion of that point on the Committee's agenda because it needed to have sufficient time devoted to the discussions on broadcasting and exceptions and limitations, which were of great importance to GRULAC, as well as other topics, which were found in other business, for example, the proposed analysis of copyright in the digital environment.

210. Professor Ricketson responded to that set of questions, and his response would be found at the webcasting link of WIPO: (Friday, November 18, 2016 Morning Session)
<http://www.wipo.int/webcasting/en/?event=SCCR/33#demand>

211. The Chair thanked Professor Ricketson for his presentation and closed the presentation and that item of the Agenda.

**AGENDA ITEM 6: LIMITATIONS AND EXCEPTIONS FOR LIBRARIES AND ARCHIVES
(CONT.)**

212. The Chair stated that regarding the analysis of limitations and exceptions for libraries and archives, the floor was open on topic 10, contracts.

213. The Representative of the ICA stated that copyright was typically understood as a balance between, on the one hand, promoting the public interest in the creation and dissemination of informative intellectually enriching works for public consumptions, and on the other hand, obtaining a just reward for creators by providing financial incentives for authorship. Archives played an essential role in serving the public interest by preserving and making such works available to the public. The Representative of stated that in the digital world, the international flow of information between archives and libraries and from libraries and archives to their users, was especially dependent on internationally recognized exceptions and limitations to copyright. Archives in particular relied heavily on such exceptions because the majority of their holdings were not created for commercial purposes, thus for most material in their collections, there were no representative bodies to provide licensing, and there was little prospect of effective new licensing models. Exceptions and limitations that were fundamental to the work of archives could be over ridden by contractual agreements. For example, some archives were using private sector vendors to provide cloud storage for their digital holdings. If the vender was in another jurisdiction, the cloud storage provider may fail to comply with the copyright and privacy laws of the repositories jurisdiction. The mere presence of boiler plate or standard clauses establishing the choice of law that would govern an agreement would undermine the principle of territoriality that undergirded international copyright law. Contractual overrides completely nullified the purpose of the exceptions and tipped the copyright balance toward the benefits of right holders. The Representative expressed that without effectively agreed upon limitations and exceptions, the copyright system risked being a private system with little inventive to serve the public interest. Thus, whatever instrument resulted from that process must include a provision that permitted an archive or library to invalidate any contractual provision that prevented or restricted it from doing any act consistent with the limitations and exceptions provided by such an instrument.

214. The Representative of IFLA stated that it recognized and respects the right to contract in most, if not all Member States' legal traditions. The Representative expressed that it recognized that contractual terms and conditions could clarify gray areas that did not exist in copyright law. However, those values and benefits were often outweighed by the restrictive terms and conditions found in many licenses that libraries encountered when obtaining content for patrons. It was an important principle that licenses should not override statutory limitations and exceptions. The Representative stated that much of what was accomplished that week and would be of little confidence if the way forward did not guarantee that the rights secured for libraries and patrons could not be over ridden by a contract. The essence of contracts, licensing and libraries, represented a dangerous reordering, a move from the public sphere in transparent processes established through open forums such as the Committee and within Member States legislative processes. The Representative stated that even in negotiated license scenarios, that ordering often presented libraries and library patrons with an information landscape severely lacking in uniformity. That was due to the differing authorized use preventions contained in the array of licenses that may govern any one library's collections. The Representative stated that content licenses often contained a restriction on further distribution, prohibiting the library from engaging in what would otherwise be lawful, interlibrary loan exchanges with other libraries, for the benefit of patrons. That clause may also prevent a library's own patron for sharing the content with others in a non commercial context, overriding exhaustion or first sale rights. The Representative stated that in an analysis published in 2013,

of 224 electronic journal licenses in California libraries from 2000 to 2009, purchase certificate found that prohibitions on electronic library loan and other restrictions were common. The British library conducted a review of 100 licenses for electronic resources in 2008 and found that over 90 percent of the licenses contained terms that were more restrictive than the existing exceptions and limitations law. The Representative stated that the private ordering could also result in a library bound by laws of another Member States, due to the choice of law and choice of form provisions. The Swiss library consortium estimated that 60 percent of the licenses referred to U.S. law, to other jurisdictions such as Germany, 25 percent to the U.K., and just 15 percent referred to Swiss law. The Representative stated that it recommended nip instrument regarding limitations and exceptions for libraries mirroring the approaches taken by countries such as Belgium, Ireland, Montenegro, Portugal, the U.K. and being considered by South Africa, whereby a proviso is included stating any contractual clause purporting to restrict limitations and exceptions secured for libraries in the copyright law be deemed void and unenforceable.

215. The Representative of eIFL.net stated that in 2010, a review found robust evidence that licenses for educational content in libraries routinely conflicted with statutory copyright exceptions. That study also found that among publicly funded institutions, that libraries were certainly the most affected by usage restrictions in copyright contracting. For example, while national copyright law may permit the lending of a copy or the creation of a preservation copy, the license could prohibit or restrict that activity, in essence, the public law of copyright was being hollowed out by the private law of contract. The Representative stated that the review found that even in the sectors such as libraries, that they should be in a position to negotiate. Evidence was that statutory limitations and exceptions were becoming irrelevant and that was because the bargaining strength of the parties was unequal. Publishers dictated the terms and libraries had to accept because they needed to obtain access for the specialized content for their users. The Representative stated the issue was also international because the licenses were usually governed by the law of phone jurisdiction, irrespective of where the library was located. The licenses were usually written in English regardless of national language and in many jurisdictions it was unclear whether those restrictions on otherwise lawful activity were in fact enforceable. The Representative stated that it recognized that licenses were part of the digital ecosystem, for example, a license to a digital work could reasonably define the number of committed simultaneous users, at the same time it should not be possible to prohibit the exercise of copyright exceptions enacted by lawmakers. Where that happened it was the taxpayer who was funding the libraries that was the loser. Legislators were increasingly recognizing the problem and were coming up with solutions. The Representative stated in 2014, when the United Kingdom adopted an exception for text and data mining, it prohibited the enforcement of contractual provisions intended to override the exception and at the same time it also protected the library exceptions. Unfortunately, of course, it failed to prevent the override of technological protection measures. The Representative stated that the proposed European treaty on copyright and digital single market, which was released in September 2016, protected that from being overridden by contract. Indeed, there was precedent for that as both the 1991 software treaty and the 1996 database directive declared that the contractual provisions contrary to the directive, irrespective exceptions, were null and void. The Representative stated libraries needed the same protection as others and that exceptions granted by legislature should not unilaterally be overturned by copyright owners.

216. The Representative of EBLIDA stated that the contract override issue was about protecting a balanced copyright framework by safeguarding limitations and exceptions provided by law, on the principles that the prerogative of legislators to undermine the extent and operation of copyright limitations and exceptions should be respected. The Representative stated that various European countries, the United Kingdom, Ireland, Portugal, and others legislated to any contract terms, not the whole contract, that per ports to restrict or remove the exceptions and limitations. Singapore was considering similar measures as it updated its copyright laws. The European Union was making a start at the same level to protect the same in the undermining exceptions by being undermined by the license term. The Representative

stated that when the United Kingdom legislated for that in 2014, it was evident from comments made that the principal of protecting the vision of the copyright framework was a major driver for protecting limitations and exceptions from tradition by license terms. The Representative stated that until then, as evidenced by a 2008 study, more than 90 percent of licenses with the information resources offered to libraries had prohibited the carrying out of acts permitted by the U.K. law. Licenses for products often had terms that restricted or prohibited lawful uses such as preservation copying, copying in accessible formats for visually impaired people, copying for other purposes and in supply of requests to readers from other libraries, lending, copying for education for research or for private study, text and undermining. The Representative stated that the Internet knew no borders as the resources were accessible from anywhere in the world. The international digital licenses, that were offered to libraries everywhere with terms that often negated the limitations and exception established in the international laws of the subscribing library. Typically licenses offered internationally were governed by laws of the chosen legislation of the publisher, as a library managing several hundreds of licenses, they had uncertainty of laws that did not correspond with their national law. The Representative stated that the trumping of limitations and exceptions was a mockery to copyright legislation. The community effect was that licenses, often international, in nature were government controlled.

217. The Representative of LCA stated that contractual restrictions on limitations and exceptions were perhaps the greatest threat to the legitimacy and effectiveness of the copyright system as they had the potential to replace the public law of copyright formed at the national and international level, with the private law of contract imposed by right holders on consumers. The Representative stated that that trend started over 50 years ago, as software experts began to distribute products under license. As more products were distributed digitally, those licenses became ubiquitous and now almost all digital content was obtained subject to a license, including digital content licensed by libraries. The Representative stated that the potential for conflict between contracts and copyright exceptions was enormous. That was an issue that was considered in a comprehensive manner in the United States of America. However, the Representative stated that there was greater awareness of that problem in Europe. The Representative expressed that that was an issue that WIPO and the Member States needed to address if copyright were to continue to reflect public objectives.

218. The Representative of the German Library Association stated that library statistics in Germany indicated that online resources purchases represented 60 percent of the total budget for research libraries. In technical universities, the budget share for online resources purchases was even higher: 83 percent at the technical University of Munich and 67 percent at the technical University of Berlin. The Representative stated that in non-specialized research libraries, the expenses for online resources accounted for 73 million Euros. Different from printed materials, online materials were not purchased by simple faith contracts, but by hundreds of several different long licensed page agreements. The Representative stated that those license agreements can and do override statutory exceptions. The Representative stated that as had been shared in the Committee by some delegations, there was a problem with implemented mandatory exceptions being over ridden by licenses. The Representative stated that exceptions which were not mandatory simply had no effect, and that, national mandatory exceptions may not even have any effect when the library and right holders were located in different countries. The agreement may be ruled by the jurisdiction of the right holders' countries, or the court may refuse to recognize the effect of other jurisdictions' mandatory exceptions. The situation where the right holder and the purchasing library were established in different countries was now the norm. The Representative stated that libraries purchasing online resources from foreign right holders should be sure that the exceptions of their own countries legislation were effective and recognized by foreign courts. That could only be achieved by an international agreement.

219. The Representative of AfLIA stated that Africa was a continent with so much potential but has been held back because of the lack of infrastructure and connectivity, leaving people

isolated from the world. The Representative stated that there were many possibilities created by digital technologies. For example, the use of the mobile telephone by farmers and fishermen, to regulate agricultural inputs and monitor market prices, has been very successful. The Representative expressed that digital tools opened the opportunity to plug Africa in the global knowledge society and that technology could help develop the literacy, knowledge, skills, and creativity of Africans. The Representative stated that libraries and users accessed digital licenses, which became a problem comes when those licenses included terms which limited the effect of exceptions and limitations to copyright. The Representative stated that as libraries in Africa and around the world were making ever more use of licenses to digital materials, rather than physical ones, the risk imposed by the lack of resolution was even greater. The Representative stated that it was hard to understand why activities allowed by policymakers, were done through contractual terms. The Representative expressed that the African publishing industry was still small and that it relied heavily on buying materials from elsewhere. When a library subscribed to an online journal, which was published outside of the continent and was governed by its home laws, that was particularly a problem as the librarians were offered to access the licensed materials that were governed by foreign laws. The Representative stated that the solution had to be a provision that made unenforceable any contract terms against exceptions and limitations. The Representative stated that unless a contract override provision was universal, librarians and users would continue to face confusion and uncertainty. Freedom of contract was an important principle, but Africa's librarians were often ill placed to negotiate terms, and faced a take it or leave it situation. The Representative stated that access to knowledge should not be so easily sacrificed. To help libraries, archives and museums meet public interests, and to ensure the effectiveness of policymaker decisions, it was essential that WIPO agreed on the non-flexibility of contract terms that overrode exceptions and limitations

220. The Representative of the International Association for the Protection of Intellectual Property (AIPPI) stated that the exceptions and limitations for library and archives should in principle not be capable of being overridden by contract, in view of the public interest underlying them. The Representative stated that they may be overridden by contract only and to the extent that the fundamental rights protected by the exceptions or limitations, such as the right of access to information, the right to education, the freedom of quotation, were not unduly restricted.

221. The Representative of STM stated that it was important to have an evidence based approach in the discussion. The Representative stated that STM had done a qualitative survey of licensing terms, covering 11,200 scientific, professional, technical journals. The Representative stated that only 7 percent of contracts applicable to those journals referred to exceptions and there was no overriding whatsoever. The Representative stated that 99.9 percent of those licenses expressly permitted interlibrary loan. The Representative stated that interlibrary loan was distinctive from the commercial and systematic supply that would induce some libraries to substitute such interlibrary loans, with the purchase their own particular content through individual contractual agreements. The Representative stated that as it could not go through the entire survey, what it wanted to highlight was that claims of abuses, for which most national laws would have redress, were where imbalances existed. The Representative stated that the digital environment relied on contracts and that it should not come as a surprise that those contracts governed the use and access of electronic goods. There was simply no other way, and even where people may think that there was no contract, there was a contract, even if it was not spelled out. The Representative stated that to say let's do away with contracts would reduce the availability of works. The Representative referred to a research initiative, Research4Life, done as a private-public partnership between four U.N. organizations, 220 publishers, four or five universities that was entirely based on contract. The Representative stated that that initiative brought research access, of more than 120 emerging or developing countries, to the level of access of the University of Chicago in the United States of America, at no cost to the beneficiaries of the program. The Representative stated that that program would

simply not exist but for licensing and contracts. The Representative stated that it objected to the mischaracterization of contract as a thing that undermined access. The new business model of open access relied entirely on licensing and contract. The Representative stated that the answer was not to limit the ability to enter into licenses. As for the necessity to determine the applicable law to a contractual document, the Representative stated that it was as such so that the publisher would not have to formulate 108 different licenses for the same content and reduce the efficiency. The Representative stated that most of the contracts were silent on exceptions and only 7 percent mention exceptions at all.

222. The Representative of KEI stated that TPN and contracts provided private roles with consequences that impacted the public in important ways. The Representative agreed with the comment made by AIPPI. The Representative stated that the relationship to contracts and copyright was important, not only with regards to exceptions, but also in terms of concerns about unfair commercial arrangements between artists, authors, publishers, a topic discussed in the GRULAC paper on the digital economy. The Representative stated that it may be useful for WIPO to convene a technical meeting on the topic focusing on impact of the contract on exceptions and also address the unfair contracts involving autonomous temperatures and performers that some right holder groups and governments highlighted as concerning.

223. The Representative of the Civil Society Coalition (CSC) stated that contracts, meant to serve users and organizations, are not an authority to move from exceptions and limitations of national legislation on copyright. The Representative stated that in the European Union, certain Member States had provisions protecting exceptions and limitations to copyright. The Representative expressed that regardless of the ultimate aim of discussion on exceptions and limitations in that Committee, it was essential to see to it that in the private law of contracts, national and international provisions were respected and complied with.

224. The Delegation of Ecuador stated that there was a principle in law that contract laws which contravene legislation, should be considered to be in existence or unwritten. The Delegation stated that as had been discussed in that Committee, sometimes libraries and archives were compelled to comply with contracts that countered national legislation, particularly, in terms of access to digital content. The Delegation stated that with the establishment of an international instrument for limitations and exceptions, which safeguarded the aforementioned principle, the libraries had to make use of all limitations and exceptions, which are provided for in the national legislation.

225. The Delegation of Argentina stated that it wished to highlight a problem which was similarly linked to the open access platforms, and which was connected to the authors of scientific replications, when the author was an employee of a university, or when the government had paid the author a subsidy to carry out and publish the work. The Delegation stated that the professor or researcher was in many cases subject to labor legislation, and the work was published in a repository of open access and that could not be done in another matter. The Delegation stated that the researchers had to see to it that the work was published in magazines of prestige, with international scope and that the researcher had to yield the rights to publication which were going to be distributed by the publication. The Delegation stated that the same research work was subject to two kinds of legislation: the regulations of employee, professor or researcher, and then the law and legislation. The Delegation stated that sometimes the government of some countries acquired the licenses of those periodic publications, to provide access to universities and libraries. In some other countries those periodic publications could be accessible with general licenses, which could be many millions of dollars and which usually include conditions as to use of the material. The Delegation stated that those contradictions had a solution, which was provisional and limited, and which would determine that the contract for yielding up rights or giving up rights, subject to publishing, could be above the labor legislation. The Delegation stated that in practice, there had not been cases for legal demands for researchers and professors who had violated the contracts. The

Delegation stated that in terms of those contracts, some provision should be made in international legislation.

226. The Delegation of Nigeria, speaking on behalf of the Africa Group, believed that it was unjust to allow contracts to negate the goals articulated in exceptions and limitations for the public interest. The Delegation stated that it supported the call by libraries and archives for an obligation to respect exceptions and limitations and the services that the organizations provide for the public good.

227. The Delegation of Chile stated that the contractor freedom was an important principle which was present in Member State legal regulations, however that could not go against any rights and obligations established by law, to prevent the exercise of limitations and exceptions to copyright and related rights. The Delegation stated that those were tools that ensured that there was balance in the intellectual property system. Therefore, the non-contractual provision should ban restricted use and could consequently consider null the effect of contract. The Delegation stated that was a legal obligation and could only be there when there was an exception improving the legal minimum guaranteed therein.

228. The Delegation of the European Union and its Member States stated that when it came to exceptions that were specific to libraries, archives, research and were related to contracts, the copyright framework was traditionally largely silent on that matter. The Delegation stated that there were certain exceptions provided for by the computer programs directive, also known as the software and database directive, with a provision regarding the possibility of contractual override. Otherwise, the matter was left to the Member States who could elect to address the issue in their legal systems or not. The Delegation stated that the European Commission had recently adopted legislative proposals in the so called second copyright package of the ongoing reform of the European Union copyright, and those proposals included exceptions addressing preservation, text and data mining. The Delegation highlighted that regarding the proposal for text and data mining exception there was a need to expressly address the issue of contractual override since that exception would often apply in a licensed based environment. The Delegation those proposals were currently being discussed by the European Parliament and the Council.

229. The Delegation of the United States of America stated that it was concerned by the suggestion that mutually agreed upon contracts between private parties would be nullified by the operation of law. The Delegation stated that in its country it recognized that contractual provisions could work to benefit both sides and that they did not always narrow the ability to exercise exceptions but could expand the activities that were permitted beyond those governed in exceptions or could provide greater clarity as to their legality. The Delegation stated that as it had stated in its objectives and principles document, right holders had a critical role in ensuring sustainable access to copyrighted works in developed countries. The Delegation expressed that rapidly changing technologies required flexible solutions and that Member States should encourage collaborative and innovative solutions among all stakeholders. The Delegation stated that another tenant of its objectives and principle document was the enablement of libraries and archives to carry out public service roles and missions. The Delegation recognized that overly strong contractual constraints may be the intention of that goal and encouraged Member States to encourage multistakeholder dialogues domestically, to elevate the concerns.

230. The Representative of Creative Commons Corporation stated that it wanted to quickly respond to the comments, in relation to Open Access Licensing. The Representative stated that it was using Open Access Licensing as an example to show the need and benefit of licenses and contract. The Representative thought that the issue was being misconstrued, and that the issue was not that there was not a place for licenses and contracts and management of copyright, but the issue was that some contracts had terms that effectively contrasted the benefit of the exceptions for the user. The Representative stated that there was a frequently

asked question on the Creative Commons website asking if Creative Commons Licenses affect copyright such as fair dealing and fair use. The Representative stated that the answer on the website was no, as all of the licenses included language that accounted for exceptions and limitations. The Representative expressed that nothing in that license was intended to reduce, limit, and restrict any rights arising from fair use, first sale or other limitations on the exclusive rights of the copyright owner under copyright law or other applicable laws. The Representative stated that the laws of all jurisdictions allowed some use of copyright material without permission of the creator and allow quotation, reporting and parody in some jurisdictions. Fair use and dealing were two exceptions to copyright that may be relevant to use of the Common Creative license work depending on the jurisdiction.

231. The Chair opened the floor on topic 11, exceptions and limitations for libraries and archives related to the right to the translation of works.

232. The Representative of ICA stated that archival institutions did not routinely translate their holdings into another language, although one could find examples where that has occurred. The Representative stated that the Newton project at the University of Sussex translated selected religious writings by Sir Isaac Newton from Latin into English and that in the United States of America they had translated eighteenth and nineteenth century journals from German into English. The Representative stated that those did not infringe copyright because their copyright had expired. However, there were occasions when it was necessary for archivists to translate in copyright records, or a portion thereof, that were in another language, either to present such documents as an exhibit, to prepare a guide in the official languages of the archival institution or to establish whether there was content that could be restricted in some way. The Representative stated that missionaries in Nicaragua had operated educational institutions and hospitals, and had kept detailed journals, written in the Moskito language, documenting their work. The Representative stated that some of those records from the 1930s to the 1980s were in the Moravian archives in the United States of America, but no one there read them as they contained personal information about students, hospital patients and participants in the political upheavals of the 60s and 70s. The Representative stated that while it recognized that the church would own the copyright to those particular records, there may be other similar holdings whereby the church was not the right holder that needed translation. The Representative stated that making their holdings available for research was fundamental to the archival mission, therefore it was desirable that any instrument resulting from the process include an exception that permitted archives to translate works in order to determine the content of the records, both to identify and safeguard sensitive information and to prepare descriptions of their holdings, that made them accessible for non-commercial purposes throughout the world.

233. The Representative of eIFL.net stated that librarians were trained to help people find the information they needed. Thanks to translation, not only could people everywhere access the world's knowledge, but their own expressions and ideas could reach the widest possible audience. The Representative stated that the translation rights offered by Article 8 of the Berne Convention provided the rule, but when it was only one or two individuals who needed a work, or when the right holders chose not to exercise their rights, or when it was not even clear who the right holder was, there was a situation of market failure. There was a need for libraries to perform translations in order to obtain data vital to making works discoverable in the first place. The Representative stated that faced with that risk of market failure, exceptions offered a solution. In situations where there was no commercially available translation of a book, it should be permissible to make the translation for a user for personal research purposes. The Representative stated that in Japanese and Egyptian law, translation fell under the reproduction exception, whereas in Chile, there was a separate exception. The Representative stated that the translation exception, therefore, was part of the reproduction exception or standalone provision, and would help not only avoid market failure but also an unnecessary barrier to access to knowledge.

234. The Representative of SAA stated that when it first heard that translation was a suggestion, its first reaction was that archivists don't translate as they were neutral. The Representative stated that upon opening its morning email, it was reminded that of course archivists could avoid doing translations, as they managed records of unfamiliar languages, which translation would help archivists accomplish some core functions of their work such as appraisal, description and user services. The Representative stated that there three reasons as to why translation was a necessary a part of the archive toolkit. First, there was a long tradition of archives being centers for creation and of authoritative additions of historical documents, often involving translation into the local language. Second, translation in part was essential for administrative purposes such as the preparation of collection inventories, review of documents to determine the merit retention, attesting the authenticity of a document and providing guidance to research users. Third, translation may be necessary in the response to the current technologically driven researchers, seeking material for protection of human rights, cultural preservation and digital humanity scholarship. The Representative stated that that wakeup email from a staff member alerted it on the need for a translation. The Representative stated that sometimes translation was just needed for inventory control and that most modern archives include materials in many major languages as well as indigenous, disappeared languages. The Representative stated that exceptions for translations would also need to incorporate support for the use of new technology, that enabled archivists work with digital humanity scholars and students in an era where high quality automated translation was on the horizon, and not necessarily Google translate. The Representative stated that establishing exceptions that did not support library archives' and museums' use of such automated translation technology, would merely guarantee immediate obsolescence.

235. The Delegation of Ecuador stated that knowledge of another language could not be a barrier that impeded access to the knowledge of information and education. The Delegation stated that the Committee must contemplate the possibility of having libraries and archives translate works that were not available in the official language of each and every country, in conformity with the records of the Stockholm Conference. The Delegation stated that the Committee must apply the same rules and exceptions to translation.

236. The Delegation of Chile stated that the universal ability to have access and to contribute to information, ideas, knowledge was an essential element in an inclusive society. The Delegation stated that the current situation indicated that the world constantly had to face asymmetries of information on a global level. Very often that attributable to differences, but in the end, those led to barriers for everything else. The Delegation stated that with access to knowledge to overcome those, it was essential to have effective public policies. In that context, the Delegation believed that it must be possible for libraries and archives to translate works which were extremely important for the world to make progress, without a requirement to remunerate the owner nor obtain authorization, without being subject to certain conditions including that they have been acquired legally, that the translation should be done after having allowed for a certain amount of time to pass and that translation should be carried out for reasons of research or a study.

237. The Delegation of Brazil stated that as it had mentioned in its previous statement, one of the obstacles facing those seeking to further their education in Brazil was the fact that important and up to date reference materials were not always available in the Portuguese language. Still, that was a universal problem, as any English speaking academic researcher would confirm that many works of foreign scholarship were not translated into the world's most widespread language. The Delegation believed that libraries and archives should be allowed, for the purpose of teaching, scholarship or research, to translate in any format works lawfully acquired or accessed when the works were not available in the national language, provided that the authors name was included. The Delegation stated that it was persuaded that that was in full compliance with the three-step test and that it was an important measure to encourage access to knowledge.

238. The Delegation of Nigeria, speaking on behalf of the Africa Group, stated that as a region with diverse languages that did not or may not form the most common languages, using the international scientific and cultural discourse and production, it believed that language should not be a barrier to access to knowledge. The Delegation stated that there was not enough demand or incentive for right holders to translate the works into those local languages and that excluded users from the quantity and cultural and scientific research. The Delegation stated that it was in that regard that the Africa Group strongly supported abandoning international instruments that led to provisions for exceptions for libraries and archives to be able to translate the copyright works for the use of personal, and not research purposes.

239. The Representative of KEI stated that in addition to scholarship and research that needed to use translation, there was an increase in business and commercial relationships that were cross border. The Representative stated for people engaged in those business relationships, it was important that they know what they were signing, who they were dealing with, by having basic information in another language. The Representative stated that as a result of globalization, those issues of translation were becoming more important.

240. The Representative of LCA stated that one of the virtues of fair dealing or fair use or the flexible exception approach was that it could provide the latitude for translation in the appropriate circumstance. The Representative stated that the various examples of translations in the archival context fell under a fair use type of exception. The Representative stated that that showed the virtues of a flexible, open ended approach to exceptions and limitations.

241. The Delegation of the United States of America stated that as a threshold matter, the United States of America noted that the right of translation was an important right reserved to authors under Article 8 of the Berne Convention. The Delegation stated that U.S. Copyright Act, Section 106.2 was its derivative works whereby right holders could enjoy that right. The Delegation stated that the United States of America did not support any new international limitation on that right for libraries and archives, but that it would be interested to learn more about the actual operation of such provisions under national law. The Delegation noted that Professor Crews, in the updated version of his study on exceptions and limitations for libraries identified several countries with an explicit exception for translations, made by libraries and for personal use. The Delegation stated that many of those followed the elements laid out in the Berne Convention Appendix of 1971. The Delegation stated that Professor Seng in his study had noted that on exceptions for educational purposes, he found 52 provisions from 29 Member States that addressed the compulsory licenses for translations and reproductions combined. The Delegation stated that the Berne Appendix had provisions on that, which conditioned a compulsory license for translation being used only for teaching, scholarship, research purposes and for use in connection with systematic instruction activities, although the scope of those terms was not defined in the appendix. The Delegation stated that it would be interested in hearing more from countries that incorporated those types of exceptions, whether based on the of Berne Appendix or not, to understand the exceptions that were working for right holders, users, other stakeholders, including libraries and archives.

242. The Delegation of the European Union and its Member States stated that in terms of the translation right, it would like to clarify that even though some European Member States recognized the translation right as part of their national legislation, the European Union legislative framework did not explicitly include a translation right harmonized at European Union level. The Delegation stated that no explicit exception or limitation was listed in the exceptions and limitations included in the European Union directives. The Delegation stated that such an exception allowing translation of works into another language could not at the European Union level be derived from exceptions applicable to different rights, like the reproduction right, the right to communication by the public or the public lending right. The Delegation stated that it would like to recall that the appendix to the Berne Convention included the possibility for

developing countries to enact compulsory licenses for the translation and reproduction of books for the purposes of teaching, scholarship, research. The Delegation stated that it too would like to hear about the national experiences of those WIPO Member States that had made use of that possibility.

243. The Chair stated that it would like to share a summary of that discussion. After completing the discussion on the 11 topics in the Chair's chart, the Chair wished show a preliminary outcome of that discussion. The Chair stated that since it was preliminary, the Committee should consider it a rough draft as they had done so with previous deliveries. The Chair stated that it had used the chart as a means of guiding the discussion. The Chair stated that that was limitations and exceptions for libraries and archives and that the chapeau in the document chapeau was one that the Committee had seen before. The Chair stated that that chart provided a substance for the various resources of the Committee and would allow the Committee to have an evidence-based discussion, respecting views, with the understanding that the goal was not to guide the discussion to a desired outcome, but to lead to a better understanding of the topics and relevant discussions and intended outcomes. The Chair stated that the Committee had heard the discussions on the need of establishing exceptions and limitations at the national level, and in fostering that, there were different views that were expressed. The Chair stated that the ultimate goal at the end of the discussion was the full consideration of the exceptions and limitations. The Chair stated that it had updated that chart with the view to enact exceptions and limitations for each one of those related topics. The Chair stated that the delegations could exchange national experiences, listen to best practices and listen to legislation models. The Chair expressed that at the end those were additional tools to achieve exceptions and limitations at the national level by different countries. The Chair stated that the second principle it had used was a structure for each topic. The Chair stated that that structure was mainly a principle to guide each topic and had concerns that should be taken into account by Member States when enacting exceptions and limitations on a national level for those specific topics, and after the concerns were expressed, suggested approaches to tackle those concerns. The Chair stated that that was the structure that the Committee would see, principles, concerns, suggested approach. The Chair stated that on the issue of preservation for example, the principle was that in order to ensure that libraries and archives could carry out their public service responsibility of preservation, including in digital form of the cumulative knowledge and heritage of mentions, limitations and exceptions for the making of copies of works may be allowed so as to preserve and replace works under certain circumstances. The Chair stated that the concerns related to that principle were that there was legal uncertainty regarding whether existing limitations and exceptions for preservation purposes were applicable to digital context. That included the question if the digital convention format issue should be considered as a reproduction act. The Chair stated that there was legal certainty that libraries and archives could not achieve missions out of fear of conducting illegal acts such as unauthorized uses for replacement copies. The Chair stated that additional words should be introduced to provide unauthorized uses of such copies. The suggested approach for that concern was to ensure that existing and proposed limitations would enable libraries and archives to make digitals, for the purpose of carrying out their mission. That limitation and exception should also cover digital works, and attention should be given to limit the purpose of recollection and replacement, avoiding misuse of the limitations and exceptions. The Chair stated that it read it out loud because that was the structure that the Committee would follow for each one of the 11 topics. On the right of reproduction, the Chair stated that it was considered to be for safe wording copies and that it partially overlapped with the first topic. The Chair stated that it moved from mentioning preservation, and it was reckoned that the topic could be read, a reproduction for research and similar purposes. The Chair stated that the principle was that reasonable accommodations and pensions should allow libraries and archives to reproduce for research and other purposes, without fear of engaging in illegal activities. The main concern was that it was important to secure, for research and similar purposes, the rights, and to ensure that they would not negatively affect the balance between right holder interests and the public interests. In consequence, the suggested approach was that that limitation on exceptions

should not affect the normal exploitation of the works, nor prejudice the legitimate interest of right holders. The Chair stated that illegal deficit was considered an interesting issue, and that most of the delegations recognized that it was not exactly an exception of intellectual property right. The Chair suggested that that topic be removed suggestion from the list. On the fourth topic it, national library lending, the Chair stated that there were boundaries and that the principle was that the recent limitations and exceptions should allow materials to be lent directly or through interlibrary, through print, format, digital means in the same jurisdiction. The Chair stated that the concerns were that the distribution to work through the library lending in digital format especially, should not enable unauthorized users in the world. There was a question of whether that was a benefit from the existing limitations and exceptions for library lending. The licensing was key in working efficiently, and it should not be undermined. The Chair stated that the limitations and exceptions should not affect the regime of the right of distribution. The suggested approach was that the limitations and exceptions should allow lending to avoid unauthorized users and the confinement of access, to determine the receiving of libraries among all of the solutions that have been suggested. The applicability of the limitations and exceptions on national library lending had to be subsidiary to the existence of effective licensing schemes. The Chair stated that it should be clarified that the existing social regimes should not be affected by the specific limitations and exceptions. The Chair stated that the fifth topic, related to cross border issues, was suggested to be removed from the topic of the list taking in account that that was a question to be addressed under topic six. The Chair stated that the sixth topic was on international library lending and importation and in that regard, the principle was that it could be related to that cross border uses was that libraries and archives should be able to import, export, exchange copies of works across borders for research and similar purposes, in order to achieve the public service mission through cooperation especially in developing and least developed countries. The concerns were that that limitation should not affect legitimate markets of works and the suggested approach to tackle that concerns was that in order not to affect the legitimate established markets, the limitations and exceptions for cross border usage should not affect the normal exploitation of the work and should not prejudice the legitimate interest of right holders. The Chair stated that the seventh topic included retracted and withdrawn work and works out of commerce. The discussion was focused on works and the chart, on that topic, was focused on orphan works. The principle was that it should be assured for the benefit of libraries and archives to achieve their mission and certain conditions in order not to derail users. The Chair stated that the concern was that the limitations should not affect legitimate moral and economic rights of other right holders. The suggested approach was that the provisions to adequately compensate right holders either directly or through collective management once they're identified should be included. That limitation and exception should not entail the liability of activities undertaken in good faith under the reasonable diligence search prior to the use of works. The Chair stated that such limitations or exceptions should also respect moral rights. The Chair stated that the eighth topic was limitations. The principle was that librarians should be able to fulfill public mission and responsibility without facing legal liability. The concern was that the activities should be subject to sanctions where they were undertaken with reasonable grounds to know that they constituted infringement activities. The Chair stated that the suggested approach was to apply limitations to liability, the good faith activities carried out by libraries and archives. When carried out knowingly or with reasonable grounds, to know that they constituted infringement activities. On topic nine, technological measures of protection, the principle was that limitations and exceptions granted should now be emptied of their effect through the application. The concerns were that the circumvention of law by the limitations and exceptions to TPMs should be limited to the legitimate uses. The Chair stated that the suggested approach was that appropriate measures should be taken to ensure when they provided adequate legal protection and effective legal remedies against the circumvention of the technological measures that did not prevent libraries and archives from limitations and exceptions. On contracts, a topic that had been discussed, even if it was not a limitation or exception by the horizontal issue, the impact of the contractual arrangements was set in limitations and exceptions for libraries and archives required further discussion. On topic number eleven, right to translate works, it was discussed that translating works in special

circumstances was a need that had been described. The Chair stated that further discussion was required. Regarding those two last topics, they were trying to reflect the ongoing discussion and while all the topics tried to set a summary, not all of the different sets of provisions, but trying to extract some principles that has been used in the discussion. The Chair stated that that was a good faith activity that was not intended to set an undesired outcome. It was just a matter to see the results of the rich exchange and views regarding the eleven topics. The Chair stated that the chart was a tool that required further thoughtful consideration.

244. The Delegation of Nigeria, on behalf of the Africa Group, thanked the Chair and stated that the Africa Group would consider the document and would refer its decision.

245. The Chair announced that the Committee would go back to and discuss the topic of exceptions and limitations for educational purposes.

246. The Delegation of the European Union and its Member States stated that with respect to the Chair's summary, the Delegation stated that it needed some time to take stock of what had been shared, coordinate and would revert back on that text later on.

AGENDA ITEM 7: LIMITATIONS AND EXCEPTIONS FOR EDUCATIONAL AND RESEARCH INSTITUTIONS AND FOR PERSONS WITH OTHER DISABILITIES (CONT.)

247. The Delegation of Turkey stated that in terms of limitations and exceptions for educational activities and research institutions, the chart, reflective of Professor Seng's study, was missing the topic of licensing and as such wanted that topic to be added to the chart.

248. The Delegation of the European Union and its Member States stated that it supported the statement made by the Delegation of Turkey. The Delegation invited Professor Seng to extend his study to cover the four additional items which were on the chart and which no work had been done on them. The Delegation stated that extending that study help complete the Committee understand those issues and treat them on an equal footing as the others.

249. The Delegation of Nigeria, speaking on behalf of the Africa Group, stated that the Chair's chart should also include adapted translations and adaptations.

250. The Delegation of Chile reiterated on its previous statement that in the area of limitations for research and educational institutions, there should be a study that would look at the impact in other areas. The Delegation stated that there was a more concrete proposal that would be circulated to the regional coordinators.

251. The Representative of Communia thanked the Chair for its chart, which it hoped would be useful in directing the discussion. The Representative stated that it wished to propose a topic to be added, translations and other adaptations. The Representative expressed that copyright policy needed to empower activities of teaching and learning. An argument was often made against the introduction of an internationally harmonized educational exception, based on national educational systems. To counter that argument, the Delegation expressed that the right to education, as guaranteed by Article 26 of the Universal Declaration of Human Rights, was universal. The Representative stated that national education systems may vary to a great extent with differences in curriculum, funding and certification but that did not provide any justification for variance from that universal right, therefore also the right to use copyrighted works in an educational context. The Representative stated that it agreed that attention ought to be paid to local conditions, but if that universal right was central. The Representative stated that the discussion on local specificity concerned educational publishing ecosystems. The Representative stated that the law needed to support the right to education across the world, including cross border education such as distance learning. The Representative stated that the Committee should ensure that copyright supported and did not hinder modern education. The

study indicated a great range of educational exceptions around the world, whereby in some Member States they were strong and modern, with the sky not having fallen in those countries. The Representative stated that education thrived without prejudice against authors, librarians and archivists as well as right holders. The Representative stated that in other Member States, educational exceptions were weak or non-existent with educators facing a complicated patchwork of rights, with little legal certainty, and teachers and learners having to navigate the copyright maze on their own while fearing that they were breaking the law. The Representative stated that that was not acceptable, and that the Committee needed to set international mandatory minimum standards for limitations and exceptions. The Delegation stated that it had preliminary remarks on what an educational exception should at the minimum secure. It should provide the standard set of rights to educators and learners and should keep pace with technological advances while remaining neutral to allow for the circumvention of TPMs for educational purposes. The Representative stated that it should secure the overriding of exceptions through contracts and should secure the right for non-commercial educational use without remuneration around the world.

252. The Representative of Creative Commons Corporation stated that it welcomed WIPO's new Open Access Policy, making the publications freely available and widely accessible. The Representative thanked the Chair for the extremely helpful chart and stated that it would consider it with great interest. The Representative believed that in the digital era, universal access to education was possible. The Representative stated that it was working extensively with governments, education institutions, companies and individuals, to share free licenses and legal tools to promote access to knowledge and information. The Representative stated that it underpinned many resources from academic papers through quality education videos and higher educational courses. The Representative expressed that governments, charitable and other organizations, were requiring research to be openly licensed, in return for funding. Governments and organizations were proactively using the Creative Commons platform in order to remove copyright restrictions that would otherwise hamper research. The Representative stated that all of that material was easily accessible by teachers and others, using it to study, research and build upon. The Representative stated that it was proud of the opportunities provided by the Creative Common resources and understood that licensing alone was not and never could be, the full solution. Creative Common licenses only applied to a fraction of necessary education resources and works whose creators made a conscience decision to openly license their work. The Representative stated that open licensing, or otherwise, could not replace the essential work of educational exceptions and limitations. The Representative thanked Professor Seng on his study and stated that there was work to be done before all of the 189 Member States. The Representative stated that there was a divergence on how to protect educational rights as many countries' exceptions had not kept pace with the technological advances. The Representative thanked the Delegation of Argentina for its interesting proposal focusing on the two crucial factors of uniformity and coordination that provided that minimum standards that could be used in cross border situations were a necessity in the digital globalized world. The Representative stated that it supported that proposal on the mandatory minimum standards for copyright limitations and exceptions.

AGENDA ITEM 8: OTHER MATTERS (CONT.)

Copyright Related to the Digital Environment

253. The Chair opened the floor for the second item on Agenda Item 8, which was related to document submitted by GRULAC.

254. The Delegation of Chile, speaking on behalf of GRULAC, stated that GRULAC hoped to continue the discussion on document SCCR/34/4, on the digital environment. The Delegation stated that the Committee needed to assess issues related to the digital environment, as had

been put forward by different sectors, including artists, performers, and government representatives. Bearing in mind those concerns, the aim of the proposal was to contribute to common solutions which would benefit society, and the rights holders, in light of the challenges which had arisen from new ways of using intellectual property, which were protected by copyright in the digital environment. The Delegation stated that was why it had put forward the proposal, to debate the new challenges posed by the use of works and performances, which were protected in the digital environment within the SCCR. The Delegation stated that it was please that there had been an exchange of opinions between Member States on its proposal. The Delegation appreciated the support from both Member States and from different observers, and now wished to assess that topic in greater detail and with greater focus. The Delegation proposed that to the Secretariat that a study be carried out on progress that had been made in the last ten years, regarding national legislations on copyright within the digital environment.

255. The Representative of the Ibero-Latin-American Federation of Performers (FILAI) stated that it would like to see a change whereby there was fair use of the Internet by artists and creators. The Representative thanked GRULAC for putting forward that proposal on the worrying context of the digital environment and fair remuneration when the performers' works were used in the digital environment. The Representative stated that the current situation in the digital environment was lamentable and that it would lead to a catastrophe in the near future, if adequate measures were not adopted. The Representative stated that it appreciated the proposal by GRULAC because it made an analysis of the situation and puts forward a solution regarding copyright and fair remuneration for the use of performances and works that were under copyright. The Representative stated in the last 20 years, the work that had been put forward by artists in the digital environment, had been completely ineffective for them, as it was only digital operators and phonographic operators that had benefit from that. The Committee needed to change that configuration. The Representative stated that that was an urgent topic and needed to be debated within WIPO independently, and that needed to be featured on the following SCCR's agenda. The Representative stated that the Committee needed to consider how serious the situation was as the digital economy was having a moral effect on artists, which affected millions of people across the world. That was the time to mobilize, to ensure that fair conditions were offered to musicians, considering the contributions that they made to people's lives. The Representative stated that as the WIPO Director General, Francis Gurry, had shared on world Intellectual property day, the Committee needed to mobilize for music, to ensure that the digital economy did not lose sight of the contributions of musicians and performers because they were the most important part of the productive chain. The Representative stated that it would like to ensure that the entire creative community had the collaboration, the cooperation of members and the government, as well as NGOs, so that that problem could urgently be resolved. Artists were not asking for special protection or privilege from governments; what they were asking for was understanding, so that they could continue to work and fulfill their dreams. The Representative stated that artists accepted the risks and uncertainties that existed, and all they wanted was to ensure that when their work was used, and benefits were earned, they wanted to ensure that there was fair remuneration for their use, and that was not what was currently taking place. The Representative stated that people needed to be protected and needed to feel they were protected by their representatives, with regard to intellectual property. The Representative stated that the Committee needed to ensure that it could fulfill the main mission of intellectual property which was the guarantee of the economic viability of artists and the creative industries. The Representative stated that in the last year, the artistic community across the world was unsatisfied and that there had been different manifestations of that through the creation of local and international communities which had been working on campaigns for fair Internet and for fair remuneration in the digital environment. There were general frustrations, because the earnings made from the digital environment did not get to the artists. There was general demand across the world to have fair remuneration on digital platforms that would guarantee that there would be future consumption of music. The Representative stated that there was data that artists did not have access to and which did not match the small quantities which were received by artists. The Representative stated that that

lack of clarity benefitted the intermediaries, but that it damaged the artists who were the ones who worked on the music. When artists called into question digital platforms and the ways in which the profits were distributed, they did not exact figures and the benefits and figures were unclear. The Representative stated that that was what needed to be debated in WIPO, so that artists and creators could be involved. The Representative stated that as a creative industry, it needed to work with governments to ensure that artists had the right protection, and that their rights were protected, and that they were receiving fair earnings. The Representative stated that if the thousands of artists across the world only depended on what they earned from the digital environment, they would not be able to survive. The Representative stated that in some parts of Latin America, only 20 percent of artists received the right remuneration. Artists had experienced a drastic reduction in the earnings from the digital economy.

256. The Delegation of Brazil aligned itself to the statement delivered by the Delegation of Chile, on behalf of GRULAC. On the rapid changes in the content industry, the Delegation stated that 20 years ago, Member States had celebrated the signing of the WIPO Copyright Treaty. The Delegation stated that according to specialized media, in 1996, the revenue of the music industry worldwide was 60 billion U.S. dollars. In Brazil, a music group bewildered by the fast changes in technology and its use in creative industries recorded a song stating that it was computers that made art and artists that made money. The Delegation stated that in 2006, ten years later, the scenario in the content market was quite different. According to IFPI, the music industry revenue that year was 31.8 million U.S. dollars, a decline of almost 50 percent in ten years. The Delegation stated that in that same year, Google acquired YouTube and today, according to IFPI, within the global music market, digital had become the primary revenue stream for recorded music, overtaking physical format sales. In 2015, digital revenues accounted for 45 percent of total revenues compared to 39 percent for physical sales. Digital revenues rose 10.2 percent, leading to the industry's first significant growth year on year in almost 20 years. The Delegation stated that even with that very positive outlook for the future of creative industries, in the digital environment, artists such as interpreters of music and other visual industries, complained of the lack of retainment for the use of their works in the digital environment. The Delegation stated that the previous year GRULAC had presented a document analyzing copyrights related to the digital environment and proposing discussion on the treaty areas, the analysis and discussion of legal frameworks to protect works in digital services and analysis and discussion of the role of companies and corporations that made use of protected works in the digital environment, and the verification business transparency and proportion of copyrights and related rights payments to the multiple rights holders. The Delegation stated that consensus on management of copyright in the digital environment, in order to deal with the problems associated to that matter, from the low payment of authors and artists, to the limitations and exceptions to copyrights in the digital environment, was needed. The Delegation stated that the proposal from GRULAC raised important questions to allow copyright offices to better deal with transparency, exceptions, limitations and territoriality of copyrights, in digital environment. The Delegation supported the proposal from GRULAC to mandate the WIPO Secretariat to start work on a study to analyze legal frameworks implemented in the last ten years, to protect works in digital services. The Delegation stated that that study would be instrumental in having a more informed discussion in the following session of the Committee.

257. The Delegation of Nigeria, speaking on behalf of the Africa Group, thanked GRULAC for its proposal which raised important discussions concerning copyright management in the digital environment. The Delegation stated that it would engage constructively in the Committee's discussion on how to continue its deliberations on the GRULAC proposal, along with the other agenda items that the SCCR was tasked with.

258. The Delegation of the European Union and its Member States stated that it would share a joint statement. The Delegation thanked the Delegations of Senegal and the Republic of Congo for their proposal to include the resale right in the agenda which was first raised in that

Committee at its Twenty-Seventh session and tabled at the Thirty-First session. The Delegation stated that the European Union attached great importance to the resale right, which had been recognized in the European Union legal framework for more than a decade, through dedicated legislation applicable in all its 28 Member States. The Delegation stated that it welcomed the presentation by Professor Ricketson on the resale right and thought that topic was of high importance for creators from all countries and regions of the world. The Delegation believed that priority should be given to that issue if the SCCR agenda was expanded to cover additional items in the future. The Delegation gave its support for discussion on the resale right at the international level, especially during SCCR. The Delegation looked forward to sharing its experience and information on the implementation of the European Union resale right directive and the merits of that right. The Delegation stated that it was of the view that the issue of copyright in the digital environment merited attention and discussion, so that copyright could be more efficiently protected, as it played a role in the digital era. However, it was important to note that that was a potentially very wide topic, not necessarily clearly defined, and not only related to copyright. The Delegation stated that before the Committee could take it up, it should clearly determine the concrete subject of conversation.

259. The Delegation of Turkey, speaking on behalf of Group B, stated that it wished to share a statement on both the resale right and the GRULAC proposal. The Delegation thanked Professor Ricketson for his presentation on the resale right. The Delegation stated that that presentation followed the proposal by the Delegation of Senegal and the Republic of Congo, related to that topic introduced in the SCCR plenary at the Twenty-Seventh session. The Delegation stated that it was aware of the opportunities and the challenges generated by the digital age. However, before considering discussions on that topic, the Member States needed to first reach an understanding on the objectives. The Delegation stated that any possible future discussions should be to share experiences through an open and inclusive dialogue.

260. The Delegation of India stated that it had studied the proposal put forward by GRULAC and it was of the view that that proposal was optimally timed, and that it addressed a number of issues that were cross cutting, as far as the work of SCCR was concerned in all its current agenda items. The Delegation stated that it fully supported the proposal by GRULAC and urged other Member States to seriously consider that proposal so that the work in the SCCR becomes contemporary.

261. The Delegation of Latvia, speaking on behalf of CEBS, thanked GRULAC for putting forward the proposal for analysis of copyright in the digital environment. The Delegation took note of the deliberation of the interesting ideas behind that proposal during the previous SCCR session. The Delegation stated that as the agenda of that Committee was already quite full and the proposal put forward by GRULAC covered a wide range of issues, the Delegation was considering the proposal and would pronounce itself at the later stage.

262. The Chair asked if there were any comments on the request to do a study of the legislation related to the digital environment that covered the last ten years.

263. The Delegation of Chile stated that having heard many of the comments which it had also heard in previous sessions, that was the opportune moment for the Secretariat to carry out the study on the elements which would impact the digital environment, and which had been incorporated in national legislations within the last ten years. The Delegation stated that that was the proposal that it was putting forward as a group. The Delegation clarified that that was not something that it was proposing to be a standing item on the current agenda. The Delegation stated that it was just proposing a study. The Delegation invited the delegations to take that proposal into consideration, based on concrete and objective data.

264. The Delegation of Senegal stated that it welcomed the proposal submitted by GRULAC. The Delegation stated that the arguments that had been given were very relevant, and it

believed that it would be useful to have a study carried out. That would allow the Committee to assess the impact of the WCT and the WPPT, the aims of which were to update copyright and related rights in relation to technological developments. The Delegation stated that it was true that the issue of time was pressing, and that was why, and as such the Delegation proposed a special meeting to work in that format, so that Member States could discuss all the questions that had been raised regarding the issue of resale of rights. The Delegation reiterated that it supported the proposal submitted by GRULAC and that it should be included on the table. The Delegation asked for the support of all Member States in the proposal of a meeting to discuss those issues, particularly concerning resale rights, in more detail.

265. The Delegation of Nigeria welcomed the proposal by GRULAC and stated that it looked forward to discussing it in the succeeding sessions of the Committee. The Delegation stated that it was very interested in the proposal on the study to be carried out, as it believed that apart from highlighting how the digital environment had impacted copyright administration, it would also help countries who were currently reforming their legislation. That would allow those Member States to see a clear direction on how to make provisions that would, in the digital environment, help the copyright systems in their national laws.

266. The Delegation of the Republic of Korea thanked Professor Ricketson for his presentation on the resale right. The Delegation stated that the presentation was very informative and interesting, and that it looked forward to the constructive discussion on the resale right. The Delegation stated that the introduction of that new topic may affect the time allotted for the discussion on the broadcasting treaty. Throughout the past years, the Committee had witnessed many challenges and differences among Member States on various topics, particularly on the broadcasting treaty, which was a top priority for the majority of Member States of WIPO. The Delegation hoped the Committee would take that concern into account in the address of that issue.

267. The Delegation of France supported the proposal by the Delegation of Senegal to discuss resale rights in more detail. The Delegation stated that it was interested in continuing that discussion. The Delegation stated that that proposal was good as the Committee would not have to decide straightaway whether to introduce that agenda item. On the study on the digital environment, the Delegation wanted to know if the discussion was on studying how legislation had developed over the last ten years. The Delegation wanted to know the precise focus of the study and if the study was going to see how national legislation had responded to the issues of sharing values between platforms. The Delegation stated that it was worried that the discussion on the study was a bit too vast and so complex and difficult to comprehend.

268. The Delegation of Chile thanked the Delegations of Senegal and Nigeria for supporting the proposal and for the consultation that was proposed by the Delegation of France. The Delegation stated that that was not a proposal to look at a specific point, but it was rather to have a clear panorama to understand how the legislation of different countries on copyright had responded to digital matters. The Delegation stated that it would like to identify what elements had been included in national legislations, to respond to the challenges of the digital environment. The Delegation believed that it was a broad topic, but that the Secretariat could first give a panorama, so as not to have a 1,000 page document. The proposal was to have a broad idea of what was going on in different national legislations. The Delegation stated that what it wanted to have was a factual background to be able to continue that debate.

269. The Delegation of the European Union and its Member States stated that in terms of the proposal by the Delegation of Senegal to host a meeting on resale rights, which would take place under the aegis of WIPO, the Delegation supported that proposal.

270. The Delegation of Japan stated that in terms of the topic of resale rights, it supported the statement made by the Delegation of the Republic of Korea. The Delegation stated that it

considered that it was important to respect the current balance of discussion on the current agenda items. Regarding the topic of resale rights, the Delegation believed that any information regarding that right or its mechanisms would be useful for the Committee, in order to objectively analyze the current situation. In that regard, the Delegation thanked Professor Seng for his informative presentation. The Delegation was of the opinion that that Committee, at that moment, should focus on the agenda related to the broadcasting treaty.

271. The Delegation of the United Kingdom stated that on the topic of resale rights, it supported the proposal made by the Delegations of Senegal and the Republic of Congo.

272. The Delegation of Tunisia stated that the resale right was very important and as such supported the proposal made by the Delegation of Senegal concerning the organization of a conference or a meeting on resale rights, in order to further discussion of that issue. The Delegation supported the statement made by the Delegation of Nigeria, on behalf of the Africa Group concerning the proposal by GRULAC.

273. The Delegation of Italy stated that it supported the request made by the Delegation of Senegal to organize a meeting on resale rights.

274. The Delegation of Côte d'Ivoire supported the statement made by the Delegation of Nigeria on resale rights. The Delegation supported the organization of a conference or a workshop on that topic.

275. The Delegation of Ethiopia stated that it aligned itself with the statement delivered by the Delegation of Nigeria, on behalf of the Africa Group. The Delegation supported the proposal of resale rights by the Delegations of Senegal and the Republic of Congo.

276. The Delegation of Germany supported the proposal made by the Delegation of Senegal on convening a meeting with artists.

277. The Delegation of Brazil stated that on the elements that were raised regarding the proposal from GRULAC, the study would be a good way to build that exchange of experiences. The Delegation stated that as that document was presented a year ago, it believed that most delegates had had the time to go through it

278. The Delegation of the United States of America stated that it had been listening carefully to the interventions with respect to the GRULAC proposal for a study on the progress that had been made in the last ten years regarding national level laws responding to the digital environment. The Delegation stated that it agreed with the Delegation of France that the scope was very broad. The Delegation stated that it could imagine a treatise of some 2,000 pages, which would make Professor Seng a little jealous. The Delegation stated that it had an amendment that the Secretariat come up with a scoping study, to somehow flesh out that proposal in a way that would be manageable for a researcher. The Delegation stated that the Committee could consider such a scoping study at the following session of that Committee.

279. The Delegation of the European Union and its Member States stated that on the point made by the Delegation of the United States of America, the Delegation stated that there was much merit in considering how any future study would be useful to that Committee. The Delegation stated the area was vast and indeed the 2,000 pages that were mentioned may just be the introductory part of any study on the digital impact on copyright. The Delegation suggested that the Committee give that matter further thought.

280. The Representative of the International Federation of Musicians (FIM) stated that the WPPT, adopted in 1997, aimed to update the rights of performers, in order to take into account the emergence of the Internet. The Representative stated that 20 years later one could see that

nobody had anticipated the fact that streaming would become the main mode of distribution for recorded music, replacing traditional broadcasting means. The Representative stated artists were currently in a weak position, as the revenue received from streaming was more often than not just symbolic. The Representative stated that there was an increasing frustration which every day becoming more and more unbearable. The general revenue across the Internet in telecommunications meant that that topic was now becoming more and more relevant and the Beijing Treaty, adopted in 2012, had a more modern approach. Article 12 Paragraph 3 of that Treaty mentions fair remuneration measures, which were part of the tools that were available for the fair and balanced implementation of exclusive rights of artists and performers. The Representative stated that it encouraged Member States, as part of the proposal of GRULAC, to discuss and consider the difficulties faced by creators, artists and performers, and to look for the most appropriate solutions to provide remedies to those issues. The Representative recommended studying that issue in detail, and commended the document by GRULAC for looking at the new digital environment. The Representative stated that the study that had just been proposed was something that it supported. The Representative stated that that study would help the Committee better comprehend the scope of the treaty of WIPO.

281. The Representative of the International Federation of Actors (FIA) stated that it shared the concerns raised in document SCCR/31/4 on the value gap in the digital economy. The Representative stated that that was often mentioned those days, with reference to the need for online platforms to share a more equitable part of the wealth, generated by the on demand distribution of protected content. However, when talking about the value gap, the focus was still mostly on corporate entities licensing the online use of such content, and much less on performers and other creators, without whom most of that content would never be made in the first place. The Representative stated that digital performers deserved a fair share of revenue generated by making their work available on demand. Regrettably, the mainstreaming of digital delivery services often turned into a zero benefit equation for them. The Representative stated that most of its members were routinely made to sign away all their exclusive rights indefinitely, and for any possible use, including all forms of digital exploitation, in return for one off lump payment in a digital engagement contract. The Representative encouraged all Member States to discuss how best intellectual property protection could help performers extract meaningful value from digital exploitation, in a way that may not be privy to unfair practices. The Representative believed that supplementary mechanisms guaranteed what performers got compensated for, as long as their work was stream downloaded or otherwise made available to the public. The Representative stated that the WIPO Beijing Treaty on audiovisual performances in its Article 12 Paragraph 3 expressly recognized that possibility independently of the transfer of their exclusive rights, including, for the making available of their performances on demand. Such mechanisms may remedy the inherent weakness in the provision of exclusive right that so many performers were unable to monetize. One possibility available under the Treaty was original national legislation providing for complementary and unwaivable use of payments towards visual performers from content service providers and online platforms subject to mandatory collective management, irrespective of contractual arrangements with the producer. The Representative stated that in that context, it wished to emphasize the supplementary mechanisms described in Article 12 Paragraph 3 of the WIPO Beijing Treaty that could equally be applied in the field of audio performances, even if the WPPT did not contain a similar express provision. The underlying idea which the Representative endorsed and supported was not to replace exclusive right with something else, but to make sure that the appreciation enshrined in the provision of those rights, and the willingness to enable all performers to earn a decent living from their intellectual property rights, was guaranteed in practice in both analog and digital environments. The Representative stated that it was a strong supporter of such solutions that respected existing industry business models and the collected bargaining process, whilst promoting fairer Internet for performers and recognizing fair contribution to the creative industry and to cultural diversity.

282. The Representative of IFPI stated that at the previous SCCR it had suggested that more information and data be collected and shared on the state of the digital markets, in order to increase the understanding of the rapidly evolving marketplace. The Representative welcomed the idea of further study in that area, and it believed that WIPO could play a pivotal role as a trusted and neutral party in collating and sharing data on the marketplace, both among Member States and private sector stakeholders. The Representative believed that such information sharing between the private and public sector was best done outside the forum of SCCR.

283. The Representative of CIS stated that the environment controlling the distribution of software and digital services, which connected users and developers, assumed significant importance. The Representative stated that a study after the scoping exercise should encompass methods in which digital cooperation's were enforcing their own IP rules and had fair systems in place to address violations and restorations of works unfairly taken down from the platforms. The Representative noted that there was a serious lack of transparency as far as the conduct of such operations. The Representative stated that, in India, it had met several creators who had suffered as a result of such actions. In that regard, the Representative stated that it would be useful to know how creators and developing countries were impacted by rules enforced by platforms largely situated in developed countries.

284. The Representative of CISAC thanked GRULAC for the initiative. The Representative stated that the proposal by the Delegation of France and the Delegation of the United States of America on studies was a broad proposal that would need to be considered. The Representative stated that the economic growth of the last few years had increased the cultural content. There was a responsibility for artists to be remunerated, and there currently was obsolete legislation regarding the European Union's directive and the North American legislation. The Representative believed that that there was an opportunity to correct that situation and that the proposal for a directive for the digital market which was currently being debated in the European Parliament was something that could be considered by that Committee, if it continued on the work that was proposed by GRULAC and the study was carried out.

285. The Representative of KEI stated that GRULAC had asked the SCCR to take stock of how copyright systems worked practice, taking into account several important issues, such as how digital platforms impacted artists and authors and consumers of work. The Representative stated that it agreed with the United States of America and the European Union that the SCCR needed to focus on modalities of moving forward. The Representative took note of the side event by the Delegation of Finland, which showcased tools for evaluating performance of the national copyright system. The Representative stated that Member States needed to reflect on the policy intervention that would improve outcomes for artists and consumers when those were found lacking. A sub topic would be to look at development of standards for metadata attached to digital copies of works.

286. The Representative of IFLA thanked GRULAC for the proposal to analyze copyright within the digital environment. The Representative stated that it had supported GRULAC's proposals in previous sessions, particularly those on exceptions and limitations for libraries and museums and archives. The Representative believed that those could be effective nationally and could promote cross-border cooperation. Regarding technological progress, the Representative stated that the Committee had to ensure that that issue was dealt with differently. Technological changes had to be considered so that the users and beneficiaries could benefit from that. The Representative stated that according to the study by Professor Crews, there was no concern regarding the adoption of national legislation to new technologies. The Representative thanked GRULAC for mentioning that transparency was vital for dealing with works, both in their physical and digital formats. There had to be transparency in terms of the remuneration for the use of works. The Representative stated that there was a lack of regulation but that regardless of all those challenges, it believed that it was necessary to ensure

that there was a respect of rights as well as the limitations and exceptions, so that there was freedom of expression and access to knowledge. The Representative stated that whereas the sale of work was quantifiable, it was not easy to quantify the value of works in libraries and museums and archives. The Representative requested that the SCCR carry out an analysis considering the legislation on works in the digital environment as well as looking at the use of those works to ensure that there was transparency for the beneficiaries.

287. The Representative of LCA supported the proposal by GRULAC to study the impact of copyright on the digital environment on copyright. The Representative stated that the Finnish methodology of assessing the operation of copyright and related rights systems was something that should perhaps be used in that study. The Representative drew the Committee's attention to the seventeenth methodology card on the access to copyright works on creation. The Representative stated that that was a critical issue that often did not receive sufficient attention. The Representative stated that it was incredibly important to make sure that artists had access to the raw material from which they could make new creative works. The Internet certainly facilitated that kind of creativity as well as the distribution of the works. The Representative stated that that theme very much needed to be reflected in the study suggested by GRULAC.

288. The Chair opened the floor for Member States to make further comments regarding the proposal by the Delegations of Senegal and the Republic of Congo, to include resale right, taking note that previous statements had already been made on that topic.

289. The Delegation of the United States of America stated that it saw merit in the proposal by the Delegations of Senegal and the Republic of Congo, to have a conference, to explore the resale royalty right. The Delegation stated that in previous sessions of the SCCR, it had made a request for the WIPO Secretariat to commission a resale right study, which would include economic evidence that focused on the actual operation of the right at the national level. The Delegation thought that much would be gained by that. The Delegation stated that at the time that it made that initial intervention, it thought that the study could inform discussions within the SCCR. The Delegation stated that such a study could equally inform discussions in the conference proposed by the Delegations of Senegal and the Republic of Congo.

290. The Delegation of Senegal emphasized its agreement with the point of view expressed by the Delegation of the United States of America. The Delegation stated that in its proposal, it had emphasized that the study should take into consideration the economic issues.

291. The Chair stated that the Committee had just discussed two topics contained in Agenda Item 8, other matters: 1. the proposal to analyze copyright in the digital environment with a specific proposal to be discussed regarding the possibility to have a study or a scoping study, 2. the proposal from the Delegations of Senegal and the Republic of Congo to include a resale right in the agenda of future work of the SCCR, with a proposal to have a meeting or conference to analyze those specific topics. The Chair invited the Committee to take into account and consider those topics. The Chair stated that there was mention of the Finnish experience which could be considered useful in analyzing copyright related to the digital environment.

292. The Chair stated that on October 25, former Assistant Director General, Mr. Michael Keplinger, had passed away. The Chair proposed a moment of silence and opened the floor to the Delegation of Finland who had a few words to say.

293. The Delegation of Finland stated that a few days ago, it had received a sad message. The former Deputy Director General of WIPO, Mr. Michael Keplinger had passed away after a short but severe illness. The Delegation stated that Mr. Michael Keplinger held, over several decades, various key policymaking positions, serving his country in the administration of the United States of America. The Delegation stated that Mr. Keplinger had, in addition to his many national tasks, important roles in many international negotiations, including intellectual property

and bilateral and multilateral trade instruments, including the TRIPS negotiations, the preparation and negotiations on the 1996 WIPO treaties, WCT and WPPT, and the Diplomatic Conference of 2000, the results of which later eventually led to the conclusion of the Beijing Treaty on audiovisual performances. The Delegation stated that that was only just to mention some items from his career. Serving as a Deputy Director General of WIPO, Mr. Keplinger left a lasting and true impression of a fair, honest and remarkably competent policy leader. The Delegation stated that many individuals in the Committee had known Mr. Keplinger for a long period of time. The Delegation stated that it had a personal friendship with him extending back to the very beginning of the '80s. The Delegation stated that the Committee would keep a permanent dear memory of Mr. Keplinger. The Delegation stated that the SCCR as a whole should convey a message expressing its condolences to Helen, the brave wife of Michael Keplinger and the whole of his family. The Delegation stated proposed a moment of silence to commemorate Mr. Michael Keplinger.

294. The Committee observed a moment of silence.

295. The Chair stated that the Committee would have a printed copy of the summary by the Chair and requested that the Secretariat read it.

296. The Chair stated that it would not read its chart but wanted to make two minor amendments. The first one was the title, which was Chair's Informal Chart on Limitations and Exceptions for Libraries and Archives. The Chair stated that it also included a summary of the remarks by the Chair.

AGENDA ITEM 9: CLOSING OF THE SESSION

297. The Chair opened the floor for final remarks by regional coordinators.

298. The Delegation of Chile speaking on behalf of GRULAC thanked the Chair for its work, over the years. The Delegation stated that the Chair's skillful leadership had made it possible to make progress in the Committee discussions, which had not always been easy. The Delegation recognized the Chair's dedication and its tireless work. The Delegation thanked the Vice-Chair and the Secretariat. The Delegation stated that on the subject of exceptions and limitations for educational and research institutions, it understood that the revision that Professor Seng will carry out would include a reference to the impact of the cross border use of works and reproductions which was the question given to Professor Seng by the Delegation. In terms of the proposal to analyze copyright in the digital environment from GRULAC, and the specific proposal made by the Delegation during that session, for a study on the impact of progress in the digital environment on national copyright legislations, The Delegation stated that as it stated in Paragraph 25 of the Chair's summary, the study would be based on document SCCR 31/4. The Delegation stated that it hoped to be able to continue the work at SCCR 34 on all the items in the Chair's summary and also on future proposals to be submitted by Member States.

299. The Delegation of Nigeria, speaking on behalf of the Africa Group, thanked the Chair for his leadership. The Delegation stated that there was no doubt that the Chair's expertise and professionalism, along with support of the Secretariat, enabled the Committee to come that far. The Delegation hoped that in the following session, the Committee would conclude the pending discussions on the three areas that had been identified: the definitions, rights to be granted and objects of protection. The Delegation hope to work on whole document and clean up the text, with a view to move to a Diplomatic Conference. The Delegation stated that it was not satisfied with the discussion exceptions and limitations for libraries and archives. The Delegation had hoped that at that session the Committee could determine a concrete path forward, towards an international legally binding instrument. The Delegation stated that it was flexible and believed that the work that the Chair had provided was a good basis, along with the proposals contained

in its summary, that included the proposal by the Africa Group and the Delegations of Brazil, India, Uruguay and Ecuador on treaty language for exceptions and limitations for libraries and archives. The Delegation expressed its hope that Professor Seng's detailed study would include those four elements in the Chair's chart that had no comments to them: orphan works, contracts, importation and exploitation, cross border issues and limitation of liability for educational institutions. The Delegation stated that it asked for the inclusion of translations/adaptations to the study that Professor Seng would present to Member States. On the other matters of the agenda of the SCCR, the Delegation expressed support for the GRULAC proposal to analyze copyright in the digital environment. The Delegation stated that it supported the proposal from the Delegations of Senegal and Congo for further work to be done on royalty resale rights. The Delegation stated that the presentation that was made by Professor Sam Ricketson highlighted the impact that could especially have for indigenous artists. That was an area that would impact the African region. The Delegation stated that while the Africa Group would have appreciated a time frame for all agenda items, it hoped to come to that point in the following session, as that was the only way that would help to structure the work of the Committee in the way that enabled it to conclude some agenda items and make space for new agenda items submitted by Member States. The Delegation thanked the interpreters for their hard work.

300. The Delegation of Latvia, speaking on behalf of CEBS, thanked the Chair its continuous efforts in guiding the work of that Committee and the Secretariat for its continuous support.

301. The Delegation of China thanked the Chair and all the regional coordinators and delegations. The Delegation stated that concerning the broadcasting treaty, it would like to express its great thanks to the Delegation of Colombia for its proposals. The Delegation believed that discussions could lay even more emphasis on broadcasting, traditional broadcasting and other specific terms. The Delegation stated that in a multimedia environment, it would also like to see new challenges dealt with. As far as it was concerned, it would like to continue to have a sincere exchange of views. The Delegation thanked Professor Seng for his study. The Delegation thanked the Chair for its chart which it would like to use as a basis on which to work.

302. The Delegation of Turkey, speaking on behalf of Group B, thanked the Chair, the Vice-Chair and the Secretariat. The Delegation thanked the interpreters.

303. The Delegation of India stated that it welcomed the Chair's summary which captured what happened in that Committee. The Delegation expressed its concern on the unequal treatment given to various agenda items, specifically Agenda Items 5, 6 and 7. The Delegation stated that it gave importance to the work of that Committee to narrow down the existing gap, so as to finalize the text of a balanced broadcasting treaty. The Delegation stated that it would also like to have the exceptions and limitations discussion be taken forward, of which the Delegation asked the Chair to take initiative and come up with a plan of action. The Delegation reiterated its proposal that the Chair appointing a facilitator or friends of the Chair as it has been done in IGC, where the facilitator could have informal sessions in which the text for exceptions and limitations as an instrument could be discussed. The Delegation stated that exceptions and limitations were important for providing access to knowledge, as well as the principles of right to education. The Delegation thanked the Secretariat, interpreters, and all of the Member States for their participation.

304. The Chair Stated that it had been a privilege to listen, talk, learn and be a part of the Committee, that shared some goals and discussed peacefully different views, finally to reach consensus. The Chair thanked the interpreters and the Secretariat.

305. The Deputy Director General addressed to the Chair and the Vice-Chair its heartfelt thanks. The Deputy Director General stated that the Chair had done its work in an extremely

effective way. The Deputy Director General thanked the interpreters and the translators who assisted throughout the session, and who worked well on a daily basis. The Deputy Director General stated that it was extremely grateful for the constructive spirit that it had seen in that meeting, and thanked the Committee for commitment. The Deputy Director General stated that the Committee's work was going in the right direction under the stewardship of the Member States.

306. The Chair adjourned the Thirty-Third Session of the SCCR.

[Annex follows]

ANNEXE/ANNEX

LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS

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* Sur une décision du Comité permanent, la Communauté européenne a obtenu le statut de membre sans droit de vote.

* Based on a decision of the Standing Committee, the European Community was accorded member status without a right to vote.

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